TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913 1915

No. 532 179

WALTER J. CAREY, APPELLANT,

vs.

E. REEDER DONOHUE, TRUSTEE IN BANKRUPTCY OF JOHN E. HUMPHREYS, AND HARRIETT A. HUMPHREYS.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

FILED JUNE 17, 1914.

(24,276)

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 10, 1914.

No. _____

United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT.

WALTER J. CAREY,

Appellant,

versus

E. REEDER DONOHUE, Trustee in Bankruptcy of John E. Humphreys, and Harriett A. Humphreys,

Appellees.

Appeal from the District Court of the United States, for the Southern District of Ohio, Western Division.

Transcript of Record.

MORISON R. WAITE,
JOHN R. SCHINDEL,
Cincinnati, Ohio,
Attorneys for Appellant.

WILLIS G. DURRELL,
DAVID DAVIS,
Cincinnati, Ohio,
Attorneys for Appellees.

The District Court of the United States,

SOUTHERN DISTRICT OF OHIO,
WESTERN DIVISION.

Transcript of Record.

BILL IN EQUITY.

(Filed February 28, 1912.)

The District Court of the United States for the Southern District of Ohio, Western Division. No. 2017,
In Equity.

E. REEDER DONOHUE, Trustee in Bankruptcy of John E. Humphreys,

Plaintiff,

vs.

WALTER J. CAREY, NELLIE K. CANTY, JENNY CANTY and HARRIETT A. HUMPHREYS,

Defendants.

To the Honorable Howard C. Hollister, Judge of the District Court in and for the Southern District of Ohio, Western Division.

E. Reeder Donohue of Cincinnati, a citizen of the State of Ohio, as trustee in Bankruptcy of the estate of John E. Humphreys, having been thereunto duly authorized by Honorable Charles T. Greve, referee in Bankruptcy, to whom all bankrupt matters concerning said John E. Humphreys have been referred by this Court, brings this, his bill against Walter J. Carey, of Norwood, Ohio, an inhabitant of the Southern District of Ohio, Western Division; Nellie K. Canty and Jenny Canty of Norwood, Ohio, inhabitants of the Southern District of Ohio, Western Division; Harriett A. Humphreys of Norwood, Ohio, an inhabitant of the Southern District of Ohio, Western Division.

Jurisdiction of said parties and the subject matter herein having been conferred upon this Court by the Bankruptcy Act of 1898, as amended June , 1910. And thereupon your petitioner complains and says that a petition in involuntary bankruptcy was filed in this Court on January 3, 1911 by Sophia Pierce and others

against John E. Humphreys; that such proceedings were had thereunder, that on January 24, 1911 said John E. Humphreys was by this Court adjudged a bankrupt, and the bankruptcy case was at the same time referred to Charles T. Greve, a referee in bankruptcy in and for this district; that on February 15, 1911 your petitioner was appointed trustee in bankruptcy of said John E. Humphreys and your petitioner has given bond, and qualified as such trustee; that your petitioner has been duly authorized by said Chas. T. Greve referee in Bankruptcy to bring this, his bill, in equity.

Your orator further says that prior to August 6, 1910, said John E. Humphreys was the owner in fee simple of a piece of real estate fifty feet in front and one hundred and thirty-five feet in depth, on the North side of Cammeron Avenue in the City of Norwood, Hamilton County, Ohio, in the Southern District of Ohio, Western Division lying 1033.60 feet east of Montgomery Pike and Known as 2222 Cammeron Avenue, and the said Humphreys was in personal possession of said real estate, until he absconded on or about December 20, 1910, at which time Sophia Pierce, a sister-in-law, and member of his family, retained possession, having been left there by said Humphreys; subsequently your Honor directed your Petitioner who was at that time receiver in Bankruptcy of said John E. Humphreys, to take possession of said real estate and to rent the same to Nellie K. Canty and Jenny Canty, defendants herein, which he has done.

Your petitioner further says that on or about August 6th, 1910, said Humphreys, executed and delivered to Walter J. Carey a deed for said real estate, for the stated consideration of one dollar, which deed was left for record with recorder of Hamilton County, Ohio, on November 15th, 1910, and was recorded in deed book 1031, page 458 Hamilton County, Ohio, Land Records, but said Humphreys at no time delivered possession of said real estate to said Carey.

Said deed was given by said Humphreys to said Carey without valid consideration being paid therefor by said Carey, and was within four months prior to the petition and adjudication of bankruptcy against said Humphreys. Said deed is void for want of any legal consideration; if there was any consideraton therefor, said consideration was an antecedent debt and giving said deed in payment of an antecedent debt, when insolvent, was an act of bankruptcy, preferring a creditor within four months prior to the adjudication of bankruptcy.

Your petitioner further says that on or about December 28, 1910, said Walter J. Carey, executed and delivered to said Nellie K. Canty and Jenny Canty a deed for said above described real estate, for the consideration of One Dollar and good and valuable considerations, which deed was left for record with the recorder of Hamilton County, Ohio, on January 3, 1911 and recorded in Deed Book 1038 page 238 Hamilton County Land Records.

Your Petitioner further says that upon December 31, 1910 said Nellie K. Canty and Jenny Canty, executed and delivered to Walter J. Carey a deed for a piece of real estate in Madisonville, Hamilton County, Ohio, for the consideration of One Dollar and good and valuable considerations, which deed was left for record on January 3, 1911 with the Recorder of Hamilton County, Ohio, and recorded in Deed Book 1033 page , Hamilton County, Land Records.

In no one of these deeds was the actual consideration stated. Said Nellie K. Canty was at the time, and is, employed in the office of said Walter J. Carey, in the confidential relation to said Carey as your petitioner is informed and believes, of stenographer.

In view of the manner in which the said Carey secured said real estate on Cammeron Avenue and made an exchange of property with one occupying a confidential relation towards himself, your petitioner charges that said Carey by said exchange designed to get said Cammeron Avenue property out of the reach of John E. Humphreys and his creditors, and said confidential relation imports knowledge upon the part of Nellie K. Canty that said Carey's title was doubtful and that with this knowledge the exchange was made, and is, therefore, void, as against your petitioner. Your petitioner admits that Harriet A. Humphreys is entitled to have her inchoate dower allowed her as against your petitioner.

Your petitioner therefore prays that the said deed from the said John E. Humphreys, to the said Walter J. Carey and the said deed from the said Walter J. Carey to the said Nellie K. Canty and Jenny Canty be set aside and held for naught and the title to said real estate on Cammeron Avenue, as above described be found to be in your petitioner; or, if your honor holds that the title to said real estate is good in the said Nellie K. Canty and Jenny Canty, then your petitioner prays that the said Walter J. Carey be declared a trustee for your petitioner and that he be required to account to your petitioner for the fair market value of said real estate.

Therefore, will your Honor grant unto your Petitioner, the writ of subpoena issuing out of and under the seal of this Court, to be directed to said Defendants, Walter J. Carey, Nellie K. Canty, Jenny Canty and Harriet A. Humphreys, commanding them and each of them by a certain day and under a certain penalty therein inserted, to appear before your Honor, in the District Court for the Southern District of Ohio, Western Division and then and there answer the premises and abide the order and decree of Court.

Willis G. Durrell,
Solicitor for Plaintiff.

(Duly verified.)

SEPARATE ANSWER OF HARRIET A. HUMPHREYS.

(Filed October 26, 1911.)

And now comes the Defendant, Harriet A. Humphreys and for separate answer says,—she avers that she and John E. Humphreys are husband and wife and that said John E. Humphreys is forty-five years old and is still living, and that she is 37 years old. She admits that the said John E. Humphreys was the owner on August 6th, 1910, of the premises described in the Plaintiff's bill herein filed, and that said John E. Humphreys and herself, as his wife and Mrs. Sophia Pierce, who was a part of the family of the said John E. Humphreys, were in the possession of said premises until the date that said John E. Humphreys was adjudged a bankrupt.

This answering Defendant has no knowledge, except by hearsay as to the said John E. Humphreys delivering to the said Walter J. Carey a deed dated August 6th, 1910. This answering defendant denies that said Walter J. Carey paid a good and valuable consideration for said premises.

Separate Answer of Harriet A. Humphreys—Verdict.

This answering defendant further denies that she signed the alleged deed from John E. Humphreys and wife, dated on or about August 6th, 1910 to Walter J. Carey for the premises described in the Bill of Complaint herein filed; and that if her name appears on said alleged deed that the same is a fraud upon her rights, and that said name is forged and placed there without her knowledge or consent, and that she never executed said deed before any Notary or any other authority.

She further avers and has been informed that her husband, at the time, was in financial difficulties and that without her knowledge and without her consent, signed her name to said deed, without her permission, and that she has not ratified said action and does not now; and she, therefore insists that her legal rights be protected, and that her inchoate right of dower be ascertained and set off to her.

Wherefore this answering defendant prays that upon final hearing herein that her inchoate right of dower be ascertained, and that if same can not be set off by way of metes and bounds, then she is willing in that case to accept the cash value of the same, as ascertained by this Court, and for such other and further relief, as the nature of the case may require.

David Davis,
Attorney for Harriet A. Humphreys.

(Duly verified.)

VERDICT.

(Entered May 2, 1912.)

We, the jury, herein do find the issues joined in favor of the plaintiff and assess his damages at Fifty-six Hundred and twenty-five Dollars ($5,625.00).

Signed,
R. O. Edwards,
Foreman.

THIRD AMENDED BILL IN EQUITY.

(Filed January 23, 1914.)

Now comes E. Reeder Donohue, Trustee in bankruptcy of John E. Humphreys, plaintiff and in pursuance of the mandate of the United States Circuit Court of Appeals in and for the Sixth Circuit and by leave of this Court files this, his Third Amended Bill in Equity.

E. Reeder Donohue, of Cincinnati, Hamilton County in the State of Ohio, as trustee in Bankruptcy of the estate of John E. Humphreys, having been thereunto duly authorized by Honorable Charles T. Greve, referee in Bankruptcy, to whom all Bankrupt matters concerning said John E. Humphreys have been referred by this Court, brings this, his bill against Walter J. Carey, of Norwood, Ohio, and an inhabitant of the Southern District of Ohio, Western Division: Harriet A. Humphreys of Norwood, Ohio, an inhabitant of the Southern District of Ohio, Western Division: Nellie K. Canty and Jenny Canty of Norwood, Ohio, inhabitants of the Southern District of Ohio, Western Division.

Jurisdiction of said parties and the subject matter herein having been conferred upon this Court by the Bankruptcy Act of 1898, as amended June , 1910. And thereupon your petitioner complains and says that a petition in involuntary bankruptcy was filed in this Court on January 3, 1911 by Sophia Pierce and others against John E. Humphreys, that such proceedings, were had thereunder, that on January 24, 1911, said John E. Humphreys was by this Court adjudged a bankrupt, and the Bankruptcy case was at the same time referred to Charles T. Greve, a referee in Bankruptcy in and for this district; that on February 15, 1911, your Petitioner was appointed trustee, in Bankruptcy of said John E. Humphreys; and your Petitioner has given bond and qualified as such Trustee; that your Petitioner has been duly authorized by said Charles T. Greve, referee in bankruptcy to bring this, his bill in equity.

Your Petitioner further says that prior to August 6, 1910, said John E. Humphreys, was the owner in fee simple of a piece of real estate fifty feet in front and one hundred and thirty-five feet in depth, on the North side of Cammeron Avenue in the City of Norwood, Hamilton County, Ohio, in the Southern District of Ohio, Western Division, lying 1033.60 feet east of Montgomery Pike and known as 2222 Cameron Avenue, and the said Humphreys was in personal possession of said real estate, until he absconded on or about December 20, 1910, at which time Sophia Pierce, a sister-in-law, and member

of his family, retained possession, having been left there by said Humphreys; subsequently your Honor directed your petitioner who was at that time receiver in bankruptcy of said John E. Humphreys, to take possession of said real estate and to rent the same to Nellie K. Canty and Jenny Canty, Defendants herein, which he has done.

Your petitioner further says that on or about August 6, 1910, said Humphreys, executed and delivered to Walter J. Carey, a certain paper writing, purporting to be a deed for said real estate, for the stated consideration of one dollar, which deed was left for record with the Recorder of Hamilton County, Ohio, on November, 15, 1910, and was recorded in Deed Book 1031, page 458 Hamilton County, Ohio, Land Records, but said Humphreys at no time delivered possession of said real estate to said Carey.

Your petitioner further says that said alleged deed was not intended at the time of its delivery by Humphreys to Carey to be an absolute transfer, but was to be held as security, only until Humphreys paid certain monies to Carey, in which case said alleged deed was to be destroyed or a retransfer made, or, if said alleged deed operated as a deed, it was given by said Humphreys to said Carey without valid consideration being paid therefor by said Carey and was recorded within four months prior to the petition and adjudication of bankruptcy against said Humphreys. Said alleged deed is void for want of any legal considerations; if there was any consideration therefor, said consideration was an antecedent debt and giving deed in payment of an antecedent debt, when insolvent, was an act of bankruptcy, prefering a creditor within four months prior to the adjudication of bankruptcy.

Your petitioner further says that on or about December 28, 1910, said Walter J. Carey, executed and delivered to said Nellie K. Canty, and Jenny Canty a deed for said above described real estate, for the consideration of one dollar and good and valuable considerations, which deed was left for record with the recorder of Hamilton County, Ohio, on January 3, 1911, and recorded in Deed Book, 1038, page 238, Hamilton County Land Records.

Your petitioner further says that upon December 31, 1910, said Nellie K. Canty, executed and delivered to Walter J. Carey, a deed for a piece of real estate in Madisonville, Hamilton County, Ohio, for the consideration of one dollar and good and valuable considerations, which deed was left for record on January 3, 1911, with

the recorder of Hamilton County, Ohio, and recorded in Deed Book 1033, page , Hamilton County, Land Records.

In no one of these deeds was the actual consideration stated. Said Nellie K. Canty was at the time, and is, employed in the office of said Walter J. Carey, in the confidential relation to said Carey as your petitioner is informed and believes, of stenographer, or book-keeper.

Your petitioner further says that said Carey secured said real estate on Cameron Avenue illegally as aforesaid and made an exchange of same for the property owned by one occupying a confidential relation towards himself, and therefore your petitioner charges that said Carey by said exchange, endeavored to get said Cameron Avenue property out of the reach of John E. Humphreys and his creditors. Your petitioner admits that Harriet A. Humphreys is entitled to have her inchoate dower allowed her as against your Petitioner.

Your petitioner says that at the time said deed was delivered by said John E. Humphreys, to said defendant Walter J. Carey, and at the time said defendant Walter J. Carey caused said deed to be recorded, said John E. Humphreys was insolvent, and said Walter J. Carey had reasonable cause to believe that said John E. Humphreys was insolvent, that said deed was given as a preference and was so intended and said defendant Walter J. Carey had reasonable cause to believe that at the time said deed was delivered and at the time it was recorded, that the transfer of the property so conveyed to him by said deed and the enforcement of said transfer was intended to give a preference forbidden by law and would give such preference to said Walter J. Carey.

Your petitioner therefore prays that the said alleged deed from the said John E. Humphreys to the said Walter J. Carey be found not to be a transfer of said property, or if it is found to operate as a transfer that said deed be held for naught, and the deed from the said Walter J. Carey to the said Nellie K. Canty and Jenny Canty be set aside and held for naught and the title to said real estate on Cameron Avenue, as above described be found to be in your petitioner, or, if your Honor holds that the title to said real estate is good in the said Nellie K. Canty and Jenny Canty, then, your petitioner prays that Walter J. Carey be required to account to your petitioner for the fair market value of said real estate.

Willis G. Durrell,
Solicitor.

(Duly verified.)

ANSWER OF WALTER J. CAREY, ONE OF THE DEFENDANTS, TO THE THIRD AMENDED BILL OF COMPLAINT HEREIN.

(Filed January 23, 1914.)

This defendant, saving to himself all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said Bill contained, for answer thereto, says:

This defendant admits that the plaintiff, E. Reeder Donohue, is the duly qualified Trustee in Bankruptcy of the Estate of John E. Humphreys, a Bankrupt. He further admits the jurisdiction of the parties and subject matter was conferred upon this court by an amendment to the bankruptcy act passed on the 25th day of June, 1910.

He further admits that prior to August 6th, 1910, the said John E. Humphreys was the owner in fee simple of the real estate described in the plaintiff's bill herein, and that prior to said date Harriet A. Humphreys, who is the wife of said John E. Humphreys, had an inchoate dower interest in said real estate; that said Humphreys absconded on or about December 20th, 1910, but this defendant denies that said Humphreys's sister-in-law, Sophia Pierce, was left in said premises for the purpose of retaining possession of the same, and denies that she had any right or authority over said premises.

This defendant further admits that on or about August 6th, 1910, the said John E. Humphreys executed and delivered to this defendant a deed for said real estate for the express consideration of One Dollar, and further admits that said deed was left for record with the Recorder of Hamilton County on November 15, 1910, and was recorded in Deed Book 1031, page 458, of the land records of Hamilton County, Ohio.

This defendant says that said deed was intended at the time of its delivery by Humphreys to Carey to be an absolute transfer; denies that it was to be held as security only; denies that it was given by said Humphreys to this defendant without valid consideration, but avers that said deed was given for a good and valuable consideration, equal in value to the value of said real estate. It denies that said deed is void for want of any legal consideration; denies that the giving of said deed by said Humphreys was an act of bankruptcy; denies that when said deed was given said Humphreys was insolvent; denies that the giving of said deed was a preference within four months prior to the adjudication of bankruptcy.

Defendant further says that there can be no recovery from him of the property described in said deed or of the value thereof for the reason that said deed was executed and delivered more than four months prior to the filing of the petition in bankruptcy against said grantor, John E. Humphreys, which said petition was filed on January 3, 1911, and said deed was not required to be recorded within the meaning of said bankruptcy act as amended.

This defendant admits that on or about December 28, 1910, he executed and delivered to his co-defendants, Nellie K. Canty and Jenny Canty, a deed for said real estate described in said petition for the consideration of One Dollar and other good and valuable consideration, and admits that said deed was left for record with the Recorder of Hamilton County, Ohio, on January 3, 1911, and recorded in Deed Book 1038, page 238, Hamilton County Land Records. He further admits the execution and delivery upon December 31, 1910 by said Nellie Canty of a deed to him for a piece of real estate in Madisonville, Hamilton County, Ohio, for the consideration of One Dollar and good and valuable considerations and the recording of said deed as alleged. He avers that the consideration for his deed to said Nellie K. Canty and Jenny Canty was the said real estate in Madisonville and the additional sum of $2,000 paid and secured to be paid.

This defendant denies that said Nellie K. Canty was employed as stenographer or in any other capacity by the defendant, Walter J. Carey, but avers that she was the bookkeeper of the firm of Carey & Zimmerman, real estate brokers and builders, in the city of Cincinnati, Ohio, of which he was a partner.

This defendant denies that he secured said real estate on Cameron Avenue illegally; denies that he made an exchange of same for property owned by one occupying a confidential relation towards himself; denies that he endeavored to get said Cameron property out of the reach of John E. Humphreys and his creditors; denies that the defendant, Harriet A. Humphreys, is entitled to half her inchoate dower allowed her as against the Trustee in Bankruptcy, but avers that said Harriet A. Humphreys released all her right and expectancy of dower in said premises by said deed dated August 6, 1910, and that she signed and executed the said deed as the wife of said John E. Humphreys and conveyed all her right, title and expectancy of dower in and to said premises to this defendant.

Answer of Walter J. Carey—Statement of Evidence.

This defendant, for want of knowledge, denies that said John E. Humphreys was insolvent, either at the time said deed was delivered by said John E. Humphreys to this defendant, or at the time this defendant caused said deed to be recorded. This defendant denies that either at the time of said delivery of said deed or at the time he caused it to be recorded, this defendant had reasonable cause to believe that said John E. Humphreys was insolvent, or that said deed was given as a preference or was so intended, and denies that this defendant, Walter J. Carey had reasonable cause to believe either at the time said deed was delivered, or at the time it was recorded, that the transfer of the property so conveyed to him by said deed or the enforcement of said transfer was either intended to give a preference forbidden by law or would give such preference to this defendant.

This defendant says that by reason of the foregoing the plaintiff as Trustee of the creditors of John E. Humphreys, a bankrupt, has no right, title or interest in said premises and that his said petition should be dismissed.

All of which matters and things this defendant is ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly prays to be dismissed with his reasonable costs and charges in this behalf sustained.

Morison R. Waite,
John R. Schindel,
Attorneys for Defendant, Walter J. Carey.

(Duly verified.)

STATEMENT OF EVIDENCE.

(Filed February 9, 1914.)

The defendant and appellant, Walter J. Carey, files as his statement of the evidence, the testimony of the witnessess in their exact words and exhibits as con-

tained in the so-called Bill of Exceptions heretofore filed herein on the 6th day of July, 1912, said Bill of Exceptions being hereto attached and made a part hereof and refiled.

Morison R. Waite,
John R. Schindel,
Solicitors for Walter J. Carey.

Approved this 20th day of February, 1914.

J. E. Sater,
Judge U. S. District Court S. D. O.
(Judge Hollister being out of the District.)

Said testimony and exhibits are as follows to-wit:

The deposition of John E. Humphreys, heretofore taken, is read by the counsel for the plaintiff, as hereinafter appears, with all objections, rulings and exceptions, to wit:

"It is stipulated and agreed by and between counsel for plaintiff and counsel for defendants that the deposition of John E. Humphreys may be taken by submitting interrogatories, and said interrogatories to be hereto attached and made a part hereof; same to be taken before John Glynn, Consular Agent, of Truxvillo, Honduras, Central America, and the same to be read in evidence upon the hearing in this case in the above court.

(Signed): W. G. Durrell, Atty for Trustee;
David Davis, Atty for Harriet A. Humphreys.
Benton Oppenheimer and Michael G. Heintz, Attys for Wm. J. Carey, Nellie and Jenny Canty."

Interrogatories on behalf of plaintiff to John E. Humphreys, by W. G. Durrell, Solicitor for Trustee:

Int. 1. State whether or not you were a resident of the United States during the months of August, September and October, 1910?

A. I was a resident of the United States, in Cincinnati, Ohio, during the months of August, September and October of the year 1910.

Int. 2. State whether or not you were acquainted with Walter J. Carey, one of the defendants herein, and if so, how long?

A. I am acquainted with Walter J. Carey, one of the defendants in this action and I have known him for about twenty-five years.

Int. 3. State whether or not you ever had any business relations or transactions with Walter J. Carey, one of the defendants herein, and if so, what was the nature of the transactions? State fully?

Deposition of John E. Humphreys.

A. I had at various times some business transactions with Walter J. Carey, one of the defendants herein, relating to real estate and loans on real estate. Also, Mr. Carey and myself entered into an agreement to speculate in stocks dealt in on the New York Stock Exchange, upon a margin basis. This agreement was entered into on or about March, 1907, and it was agreed between Mr. Carey and myself that he was to have an interest of one-third of all the transactions that I conducted for my personal account during that year and for two or three years following. It was agreed between Mr. Carey and myself at that time that he was to receive one-third of all the profits on said transactions, or was to stand one-third of the losses, and that he should furnish one-third of the capital that was necessary to conduct these transactions on a margin.

Int. 4. State whether or not you ever deeded your real estate known as your residence on Cameron Avenue, Norwood, Ohio, and which said property is now in litigation in this case, to Walter J. Carey? If you can, give the date at which time you executed said deed, and also state what the conditions were, and the transactions had with reference to said transfer?

A. Some time in the latter part of July or early in August, to the best of my recollection, in the year 1910, I executed a transfer of the real estate involved in this litigation to said Walter J. Carey, in consideration of one dollar, which was a nominal consideration and in fact was never paid to me. During a long series of dealings on a margin, it was agreed between Mr. Carey and myself that there was a certain amount of money due him, which I was unable to pay upon demand. I informed Mr. Carey in the fall of 1909 that I would make him certain payments from time to time upon said marginal transactions in stocks as it became convenient for me to do so, and upon the request of the said Carey I executed a series of notes calling for about $15,000 in the fall of 1909, upon the understanding that I was to pay said notes at maturity if possible, or as much of same as I could reasonably liquidate, and new notes were to be given from time to time in extension of the old notes. During the winter of 1909 and in the early part of 1910, I paid a number of these notes, aggregating in all about $6,000. In the summer of 1910, Mr. Carey came to me and told me that he was very much pressed for funds, and that it would be absolutely necessary to do something to help him, as his banks were not willing to give him any further accomodation. Mr. Carey asked me to convey to him the real estate involved in this litigation, but I refused to

do so at that time, because I told Mr. Carey that his transactions with me were entirely gambling transactions based upon marginal trades in New York stocks; that I was indebted in large sums of money to various people; that I was involved and that to execute such a conveyance to him would be a fraud upon my creditors. It would also cripple my own resources in such a way that I would not be able to help myself, even if I had a chance by some lucky turn to extricate myself from my financial difficulties. I made the same statement to Mr. Carey about the first of January, 1910—namely, that I was involved and that I would give him no security in any way, shape or form, but that I would give him notes and that I would liquidate said notes if I succeeded in making the money with which to do it.

In my agreement with Mr. Carey in the fall of 1909, in addition to notes, I gave him a statement showing that there was $5,000 in my hands as margins on certain open trades in stocks that I still held, and he agreed with me that I was to close out these stocks at a later time in case the market had a further rise, and pay him sums of money arising from the sale of said stocks in addition to the notes I had already given him. In the spring of the year 1910, instead of market rising, the market had a violent fall. Said sum of money, $5,000, was not sufficient to cover the losses on the said stock, but I told Mr. Carey that the losses on his stock were sufficient then to offset nearly the full amount of the notes that he held against me. He then informed me that he would refuse to be responsible for any losses in the market; that he expected to obtain profits in the event of a future rise of the market but if there were any losses on the said stock, they should be charged to me. There then was a dispute between us from that time on as to whether there was anything at all due to him on account of the said notes.

In the summer of 1910, by reason of said Carey's financial embarrassment, he told me that if he did not get some kind of a settlement, he would bring a suit of some kind against me in the courts for an accounting. As I knew my own affairs to be badly involved at that time, I felt that it would be ruinous to allow any litigation to be started up against me, and so informed Mr. Carey. I also informed him that it would be ruinous and detrimental to my credit to make any transfers of real estate or of any other property I had, to protect any claims of my creditors that then existed, especially the claim of Mr. Carey, which was based entirely on gambling transactions in New York stocks.

Deposition of John E. Humphreys.

Mr. Carey then proposed to me that I should make a transfer of said real estate to him, and that he would agree on his part, under all conditions and all circumstances, to refrain from placing the said conveyance on record; that he would use said deed solely for the purpose of satisfying some of his own creditors that he would be able in time to satisfy his obligations, and they in turn would refrain from pressing him for settlement. Contrary to his absolute agreement with me not to place the said conveyance on record, said Carey recorded the said deed in the public records of Hamilton County, State of Ohio, some time in November of the year 1910.

Int. 5. State whether or not Walter J. Carey paid you any money, as consideration for receiving said deed, or was it given to protect said Walter J. Carey by reason of certain stock dealings or business transactions you had with him? State fully in that regard?

A. Said W. J. Carey never gave me any consideration for said deed, except that arising upon notes given to him and renewed from time to time, the consideration for which was supposed profits due to him upon gambling transactions in New York.

Int. 6. State whether or not you ever executed to Walter J. Carey, previous to the date of execution of said deed, any promissory notes, and if so, give the amount as you now recollect, and what were the considerations of said notes.

A. Along in the fall of 1909, about the latter part of October or early in November of that year, I rendered a statement to said Carey of our transactions to that time, and based upon that statement, as the Market quotations then stood at that time, I gave him a series of notes amounting to some $15,000 or $16,000, together with a receipt for $5,000, representing an amount of money that I demanded he should leave with me to cover a margin of ten points upon the stocks that I still carried for him, as the quotations on stocks existed at that time. His understanding at that time was, in case the market fell, that whatever margins I furnished to protect said stocks in my hands in case of a fall in the market, should act as a credit upon the notes that I gave him. I think, if I recall right, that I paid $5,000 or $6,000 worth of these notes between November, 1909, and February 1, 1910.

Mr. Heintz: I object to that part of his answer beginning with the words, "His understanding at that time was,"—that is a conclusion.

The Court: Yes; that may go out.

Int. 7. State whether or not there was an understanding or agreement between you and said Walter J. Carey,

as to whether said deed would be left for record upon the date of its execution, or whether it was to be held by said Carey?

Counsel for the defendant object to the above question as leading, immaterial and because the witness has already answered it in the second answer. The court sustained the objection, to which counsel for plaintiff at the time excepted and proffered the answer as follows:

"There was an absolute agreement between Mr. Carey and myself that under no circumstances whatsoever should said deed be placed on record in any manner or form."

Int. 8. State about what time said deed was left for record in the Recorder's Office of Hamilton County, Ohio, and how you learned that fact and also state if Walter J. Carey informed you personally that he was going to leave the deed for record, or if he left it for record without your knowledge and consent?

A. I do not remember the exact date, but I think it was some time in November, 1910, that Mr. Carey left the said deed for record in the Recorder's office, Hamilton County, Ohio, and that he did the same without my knowledge or consent. My first knowledge of the record of said deed was obtained from the public newspapers.

Int. 9. State whether or not there was an agreement between you and said Carey that said deed should not be recorded?

Above question is objected to by counsel for the defendant as irrelevant, immaterial and because it is covered by the answer to Q. 2. The court sustained the objection, to which ruling of the court counsel for the plaintiff at the time excepted and proffered said answer as follows:

"There certainly was a definite understanding that under no circumstances whatsoever should said deed be left for record."

Int. 10. Please state fully in your own language the consideration for said deed from said Carey to you, or if any money passed from said Carey to you, as purchase price for said deed? State fully the transaction, how it was you came to give him said deed, and if he agreed that the same was not to be recorded? State fully the whole transaction?

A. No money passed between Mr. Carey and myself. The sole consideration for said deed was notes given from time to time and renewed from time to time, during the year previous to that time, which I gave him to satisfy claims he made upon me for certain profits he claimed as a result of gambling transactions in New York stocks,

conducted jointly by Mr. Carey and myself. I have answered in Int. 4, fully as to the transactions between Mr. Carey and myself and how I happened to give him said deed.

Int. 11. State when you left the United States and state if you left anybody in charge of the property, and if so, what was the name of such person or persons?

Above question is objected to as immaterial and the court sustained the objection, to which ruling counsel for the plaintiff at the time excepted and proffered said answer as follows:

"I left the United States on or about December 20, 1910 and I left said real estate in charge of my sister-in-law, Sophia Pierce."

Int. 12. State whether you ever gave possession of said property to said Walter J. Carey at any time, before you left the United States, or afterward?

Above question is objected to as irrelevant and immaterial; the court holds the objection well taken as to this issue.

Int. 13. Please state whether you authorized Mrs. Sophia Pierce to give possession of said property to said Walter J. Carey?

(Same objection and same ruling.)

Int. 14. State the nature and character of the business that was carried on between yourself personally and Walter J. Carey, individually, so far as the consideration of this deed is concerned, and state fully whether it was buying and selling of stocks in the market, or whether it was buying and selling of stocks on margin?

Above question is objected to; by consent the answer is passed and not read.

Int. 15. State whether or not the transaction done and results obtained were made on margin, at ten point margin, or two point margin, in other words, did Carey receive stock certificates from you, or simply was the business done that of buying and selling upon two point margin, with no expectation on either side to make sale and delivery? Please answer this question fully?

Above question is objected to as leading, immaterial and involved, the court sustained the objection.

Int. 16. (Passed, question read and answer not read.)

Int. 17. State whether or not you kept a record of your stock trades and transactions with said Walter J. Carey, and if you have record of said stock transactions, where did you keep them and where are they now?

A. I have not, nor did I have at any time, a complete record of all the stock transactions. Very often transactions were made one day, placed upon a daily sheet

closed out the next day, a settlement made with Mr. Carey for his share of the deal and the sheet destroyed. There was a partial statement of the balance due him in the fall of 1909. That statement appears in a small blotter book with a brown paper cover, the book itself consisting of manila paper, and about five inches width and about twelve inches in length.

Int. 18. Describe the kind of book or books or sheets upon which you kept the account between yourself and said Walter J. Carey?

A. As I have said in answer to the previous question, some of the transactions were kept upon daily sheets, showing purchases and sales of stocks, some of which have been destroyed and perhaps some of which are still in existence. Transactions of long duration were carried in a small blotter book such as I have described in my previous answer.

Int. 19. (Question and answer passed; not read.)

Int. 20. State whether or not you ever paid Walter J. Carey any money by reason of gains or losses in the market, and if so, state fully as you can now recollect the probable amount of money, and why you paid him the money and under what conditions?

A. I made Mr. Carey payments of money from time to time upon his request, on account of our transactions. As nearly as I can recall, I paid Mr. Carey a total of about $12,000 on account of our transactions.

Int. 21. (Question and answer passed as repetition. Not read.)

Int. 22. State if you recollect now, how much money said Walter J. Carey had when he commenced in his stock dealings with you and whether or not it was all or any derived from trades upon two point margins, and was there any expectation upon his part to receive stock certificates, and was there any expectation upon your part to deliver stock certificates? Answer fully?

Above question is objected to by counsel for the defendant and the objection is sustained.

Int. 23. (Passed; question and answer not read.)

Int. 24. State whether or not at the time you executed said deed and certain promissory notes and delivered the same to Walter J. Carey, that you informed him that you were unable to pay him, the said Walter J. Carey, and that by reason of your inability to pay, that fact was fully made known to said Carey, and that at the said time you were insolvent?

A. I informed Mr. Carey as early as the fall of 1909 that I had had a bad summer, had lost a lot of money through market operations that were unsuccessful, as

well as failures of others, and that I was at least temporarily involved and that it would not be convenient for me to pay him any large sums of money at that time. He became very insistent for more money in January, 1910, and I then told him to proceed very carefully with the notes that I gave him, and with any expressions that he would care to make concerning my financial embarrassment, for any rumors that might be set afloat regarding my financial condition would hurt my credit and impair my ability to continue in business. I told him then that as near as I could figure, I was involved, but that if I could continue in business a short while and if the market was favorable to me, that I might be able to extricate myself and in time make full settlement with him, as well as all my other creditors. He then informed me that he would accept my notes and I should pay what I could from time to time and that he would gladly renew the notes as often as I desired and for as long a period as I would care for.

Int. 25. State whether or not said Walter J. Carey threatened you, that if you did not pay him for the winnings he had made in the market through you, that he would expose you and have you prosecuted, and is it not a fact that you delivered said deed under duress and compulsion?

Above question is objected to as leading and the objection is sustained.

Int. 26. State fully all of the threats made by said Carey against you in requiring you to execute said deed and deliver the same to him, and also any other securities or evidence or indebtedness to him? State fully the conversation or conversations?

Above question is objected to as leading and the objection is sustained

Mr. Heintz: Without waiving any other objections to the interrogatories submitted on behalf of the plaintiff and objecting to the competency of the witness, the defendants submit the following cross-interrogatories to be answered by John E. Humphreys:

Cross-Interrogatories to be submitted to John E. Humphreys on behalf of the defendants:

1. Are you a member of the bar of Hamilton County, Ohio?

A. I was a member of the bar of Hamilton County, Ohio.

2. How long have you practiced law?

A. I practiced law for almost twenty years.

3. Did you go into the brokerage business sometime after you were admitted to the bar?

A. I went into the brokerage business somewhere about the year 1905, a long time after I was admitted to the bar.

4. Did you not have the words, "Investment Broker," on the door of your office?

A. I may have had the words, "Investment Broker," on the door of my office, but I have no distinct recollection at this time.

5. Did you not have the words, "Investment Broker" after your name in the telephone directory?

A. To the best of my knowledge, I think the words "Investment Banker" appeared in the telephone directory.

6. Did you hold yourself out to the public as a legitimate investment broker and dealer in bonds and stocks?

A. Yes; I held myself out to the general public as a legitimate dealer in bonds and stocks. As a matter of fact, I handled a large amount of money that was actually invested in certificates of stocks and bonds. I did a large business of this kind, as well as a marginal business—like all other brokers in my city and in other cities of the United States.

7. Did you on or about July 6, 1909, forge the name of Clara L. Miller and E. L. Miller, her husband, to a mortgage for $3,000 made to Thomas W. Phillips, as mortgagee?

A. In answer to the seventh cross-interrogatory and to and including the thirty-second cross-interrogatory, he saith: "I decline to answer that question for the reason that it might tend to incriminate me."

Mr. Durrell: That has nothing to do with this case.

The Court: How does it help any in this issue to read all that?

Mr. Oppenheimer: Our motion to suppress this deposition is based on the refusal of the witness to answer these twenty-five succeeding questions, from the seventh to the thirty-second. They all relate to the question of forgeries and conditions of this kind.

The Court: I understand, and you need not read all of that.

8. Cross-Interrogatories 8 to 32 are not read.

33. What is your present occupation?

A. At present I do most anything that I can make any money out of; principally I do repair work on engines and trade in the merchandise of the country of various kinds, as the opportunity offers.

34. When and why did you leave Cincinnati?

A. I left Cincinnati in December, 1910, and did so for the purpose of preserving my freedom and liberty.

35. Why did you go to Honduras?

A. For the purpose of preserving my freedom and to seek opportunity for investment and employment.

36. Why are you now remaining there?

A. I remain in Honduras for the purpose of preserving my liberty, find employment and earn a living.

37. Did your wife accompany you to Honduras? If so, how long did she remain there with you, and why did she then return to Cincinnati?

A. My wife came to Honduras with me and remained about a month. I told her she had better return to the States and give what aid she could to straightening up my tangled affairs.

38. Where is she now?

A. To the best of my knowledge my wife is now in Cincinnati, Ohio.

39. How much money did you owe Walter J. Carey at the time of your departure for Honduras?

A. I do not consider that I owe Mr. Carey anything at all, for the reason, as already stated, that the notes were canceled by the losses on his stock in a decline of the market in the previous year; so even as a debt of honor, I do not owe him anything, and as a debt of law, it is absolutely nil.

40. How much money did you owe Walter J. Carey when you gave him the deed for the Cameron Avenue property?

A. When I executed the deed for the Cameron Avenue property, the market had just passed through a very great decline during the month of July, 1910, so that based upon the stock quotations existing at that time, Carey would owe me something, in addition to the cancellation of the notes. The amount that he would owe me I never estimated definitely for the reason that he refused absolutely to recognize his obligation to me.

41. Dd you talk to Judge Davis or to Mr. W. G. Durrell about your financial difficulties before your departure from Cincinnati?

A. I never talked to Judge David Davis nor Mr. W. G. Durrell, nor anybody else about my financial difficulties. I kept my business strictly to myself. The only person I ever talked to was the said Walter J. Carey, and I told him as much as I did in order to give him a reason why I did not meet his demands promptly whenever he made a demand upon me.

42. Did you tell either or both of them that you had deeded the Cameron Avenue property to Walter J. Carey, or did you tell them, or either of them, that your wife's signature thereto was forged?

A. I never told Judge Davis, nor Mr. Durrell, nor anybody else anything at all about the conveyance of the Cameron Avenue property. It was agreed between Mr. Carey and myself that the matter should be kept entirely secret and quiet, and that I had given Mr. Carey the deed in question solely for the purpose of accommodating Mr. Carey and helping him in his financial condition, as he represented to me at that time to be desperate.

43. Did Judge Davis ever represent you as counsel, and does he still represent you?

A. Judge David Davis represented me as counsel in the Probate Court in one proceeding some three or four years ago. He has never represented me since, nor does he represent me now.

44. Has Judge David Davis represented you as counsel at any time since you left Cincinnati for Honduras?

A. Judge Davis has never represented me as counsel since I have been in Honduras, for the very apparent reason that I had nothing to represent. I have no need of counsel at all, as I have no property in the United States to take care of. My sole interest in the United States is, that whatever property I may have had should be gathered together and sold to satisfy claims of my creditors, share and share alike.

45. Who were the witnesses to the deed from you to Walter J. Carey?

A. At this time I do not remember who the witnesses were to the deed from myself to Walter J. Carey.

46. Where and when did they sign the deed as witnesses?

A. I have no recollection at this time of where the deed in question was signed, or who signed it, or under what circumstances.

47. When and where was the deed in question prepared, and by whom?

A. The deed in question was prepared by me in my office.

48. Is the deed in your handwriting?

A. To the best of my recollection and knowledge the deed was in my handwriting.

49. When did you learn that the deed had been recorded?

A. I think I learned some time in November, 1910, that the deed had been recorded, for the reason that the record of deeds in the public press disclosed that fact.

50. Did you see the transfer in the daily papers, or in the Court Index?

A. I saw the transfer of the said deed referred to in the public papers. At that time I did not take the Court

Index, as I was not active in the practice of law at that time.

51. When and where did you sign the deed and who was present at the time?

A. I signed the deed in my office and I do not recall at this time if there was anyone present at the time of signing the deed.

52. In answering Direct Interrogatory No. 16, what is the source of your information?

A. The only source of information that I have on that subject is my recollection of transactions that took place between Mr. Carey and myself, and as I have already said, it would be impossible for me to recall each and every transaction for the reason that perhaps there were a hundred and perhaps a thousand of such transactions, of almost daily occurrence.

53. In answering Direct Interrogatory No. 19, what is the source of your information? Answer fully?

A. Such transactions as appeared upon the stock sheets that are now in existence, and records in my books, were obtained from transactions that were made on the day and date when they were recorded on such sheets and books. The source of my information is such recollection as I have of the transactions represented upon the said stock sheets and records that I kept in my books. As I have already stated, I can not recall all of the transactions, but in my previous answers, I have given the general condition of our accounts and our transactions, as I now recall them.

54. What has become of all books, papers and documents, including stocks, bonds and notes in your possession, prior to your departure from Cincinnati?

A. All papers, books, documents of every kind that I had were left in my office, in my desk and in my safe. Any and all bonds that I ever held had long since been pledged to various banks for loans. Any and all stocks that I had ever owned had long since been pledged to banks for loans and all mortgages that I had ever held for any length of time had long since been liquidated and used in the brokerage business.

55. Did you take any securities with you at the time of your departure? If so, what was their value?

A. When I went away I took absolutely no securities with me of any kind whatsoever. All money that I had at my disposal had absolutely been exhausted in my efforts to pay my debts and continue my business.

56. Did you take any money with you at the time of your departure, if so, how much?

A. When I went away I had about $300 in my possession, which represented my bank balance which I drew

before I went away to cover expenses of travel and immediate cost of living.

57. What was the date of the last payment of any money made by you to Walter J. Carey?

A. The best of my recollection is that I paid on or about February 1, 1910, about $2,500 worth of notes that had been discounted at the bank for Mr. Carey.

58. Did you pay any sums of money to any other individuals after the time of the last payment made by you to Walter J. Carey?

A. I paid various sums of money and received sums of money almost daily in the ordinary course of business.

59. In what bank or banks in Cincinnati or elsewhere, did you have deposit accounts, during the time of your transactions with Mr. Carey, and up to the time of your leaving Cincinnati?

A. I carried an account in the Second National Bank of Cincinnati and also the Fourth National Bank of Cincinnati.

60. Did you ever submit to Walter J. Carey any statement of his account with you? If so, did those statements show any credits for dividends for stocks purchased on his account, or any interest charged against him for money borrowed on his account?

A. As I have said before, I submitted statements to Mr. Carey whenever he made request for same on his account with me, and I gave him credit on the same for whatever dividends were due him upon said stocks held for our joint account, and also charged him with whatever his proportion of the interest would amount to upon balances due upon said stocks according to the customs and demands of all brokerage houses. I also made a statement of said accounts from time to time of such sums of money as I had paid to Mr. Carey on account. As I previously stated, at times, our settlements were almost daily, and then again I submitted statements may be one in thirty days or once in sixty days, whenever he made a request for same.

61. When did you prepare the written statement in which you recite that your wife's signature to the deed to Carey was forged?

A. I prepared a written statement as regards the deed that was made to Mr. Carey, a day or two before I left Cincinnati. It was my desire to disclose to my creditors the transaction between Mr. Carey and myself, as I did not consider that he had any right or title whatever to the real estate in question, because as a matter of fact, there was no consideration for the conveyance of said real estate excepting such as he might claim on such

gambling transactions conducted for our joint account, and that if I allowed such transfer to stand, it would be, in my opinion, an absolute fraud upon my just creditors.

62. Did you tell anybody before leaving Cincinnati that you had prepared such a paper? Did you tell Judge Davis or Mr. Durrell or Mr. Stern about such paper?

A. I told no one in Cincinnati or any place else about the preparation of such a statement; I simply prepared it and left it in my desk so that it would pass into the hands of such officer of the court as would be authorized to take charge of my property.

63. When did you begin dealing in stocks?

A. I began dealing in stocks about the year 1900.

64. Did you not make considerable money dealing in stocks?

A. Like all other men who deal in stocks, at times I made very large sums of money; at other times, my losses were equally large.

65. Did you not have the reputation in Cincinnati and in Norwood where you lived, of being a man of some means?

A. As far as I have been able to learn, I had the reputation in Cincinnati and Norwood, which is a suburb of Cincinnati, of being a man of large means.

66. Did you not do a legitimate brokerage business?

A. I did a large legitimate brokerage business and sometimes I carried some accounts of margins with bucket shops.

67. Were not many of your investment clients, women, and did they not have absolute confidence in you as a legitimate stock broker?

A. I had a large clientele among women who had absolute confidence in my judgment and ability to make investments. Such investments, however, were made in mortgages, gilt edge stocks and bonds for cash.

68. Did not Mr. Carey, from what he observed of you and your way of living, have reason to believe that you were a man of means?

A. I presume that my reputation and standing were such as to lead Mr. Carey to believe that I was a man of means.

69. Did you not frequently tell him that you were making large amounts of money in your business?

A. In conversations I had with Mr. Carey and also in statements, I showed him, from time to time, he was aware that large sums of money were made at times and that at other times large sums of money were lost.

70. After you learned that the deed to Carey had been recorded, did you go to see him about it?

A. After I learned that the deed had been recorded by Mr. Carey, I went to his office to see him and make a demand upon him for the re-conveyance of the real estate at once, on the ground that it never was our understanding at any time that under any circumstances should the said deed be recorded, and that I had merely given it to him simply for the purpose of his accommodation.

71. If he had agreed with you not to record the deed, why did you not go to see him after you learned it had been recorded?

A. As I have already said, I went to his office and made a demand for the re-conveyance of the said property to me, but he absolutely refused to do anything.

72. Did Mrs. Sophia Pierce know that you were financially involved at the time you left Cincinnati?

A. I informed Mrs. Pierce one day before I left Cincnnati that I was in trouble and that I did not see any immediate prospect of being able to extricate myself from my difficulties and I determined to go away from the city. I did not tell her where I was going.

73. Did you not hold yourself out to them as a legitimate broker?

A. I do not understand what is meant by this question, as I do not know who "them" refers to; but will say in a general way, as a matter of fact, I did a large amount of legitimate brokerage business, as well as marginal transactions.

74. Did you and your wife execute a deed for certain property in Michigan to Howard I. Justice, in May, 1910? If so, was that deed given for the settlement of indebtedness from you to Justice arising from legitimate stock transactions?

A. I executed a deed for a piece of property in Michigan to Mr. Howard I. Justice, the consideration for which was $2300, cash. There were no stock transactions involved in this consideration.

75. Did Mr. Justice know at the time you gave him the deed, that you were insolvent?

A. I did not tell Mr. Justice anything at all about my affairs. He had no knowledge whether I was solvent or insolvent.

76. Did you not frequently keep large balances in bank and did you not make it known generally that you were possessed of ample ready money?

A. I generally had large balances in the bank and was able at all times to meet all demands upon me almost up to the time that I left the city.

77. Did you not for several summers prior to your departure from Cincinnati, spend your vacations in your

summer home on Burt Lake, Michigan, and did not Mr. Carey know this?

A. I spent my summers for a couple of years in my summer home at Burt Lake, Michigan. Mr. Carey was aware of this fact and upon two occasions in two different years he made a visit to me at my summer home in Michigan.

78. Did you employ stenographers or clerks at any time during the three years preceding your leaving Cincinnati? If so, give their names and addresses?

A. I employed stenographers and clerks at various times in my office, but at this time I am unable to give names and addresses of any.

79. Did you execute orders for stocks or securities for Judge David Davis, Howard Justice, Harry Anderson, Thomas Welch, Rev. Mr. Mitchell, Arthur Frank, Sophia Pierce and Mrs. Rohner, or any one or more of the above named persons during the time Mr. Carey was dealing with you?

A. I had marginal transactions at various times with the following persons named in this list: Judge David Davis, Harry Anderson, Thomas Welch, Rev. Mr. Mitchell, Arthur Frank, S. Pierce. At no time during my brokerage business did I ever conduct any marginal transactions for either Mrs. Roemer or Mr. Howard I. Justice. I bought a few certificates of Pennsylvania Railroad stock and Southern Pacific Railroad stock for the account of Mrs. Roemer, who paid for them in cash and received her certificates.

80. Did you have a ticker in your office during the time that Mr. Carey was dealing with you?

A. Yes, I had a ticker in my office at the time that Mr. Carey was dealing with me in stocks.

81. With what brokers in New York or elsewhere did you have accounts?

A. I carried accounts at various times in New York stocks with C. I. Hudson & Company; Miller & Company, of New York, Feder, Holzman & Company of New York and Cincinnati, H. M. Beazell of Cincinnati, Page & Hill of Cincinnati, O'Dell Commission Company of Cincinnati, Capitol Investment Company of Chicago, Illinois, W. F. Fagan & Company of Cincinnati, W. B. Carey & Company of Cincinnati, Mr. Stoltz of Cincinnati, whose initials I do not recall, the Commission—Stock & Grain—Company of Cincinnati, and had some other small and scattered transactions with various brokerage houses in Cincinnati, New York, Milwaukee and Chicago.

82. Did you have any transactions with C. I. Hudson & Company, Howard Beazell & Company, Miller & Com-

pany and Post-Flagg & Co., during the time Mr. Carey was dealing with you?

A. I had transactions with the brokerage houses named, herein either directly or through their correspondents, during the time that Mr. Carey did business with me.

83. Who was in charge of your office during the summer of 1909, while you were at Burt Lake, Michigan?

A. The best of my recollection is, that Mr. Harry Anderson was in charge of my office during the summer of 1909, when I was absent from the city.

84. What amount of money did you entrust him with?

A. I have no distinct recollections at this time of the amount of money entrusted to him, for the reason that the money was probably up as margins in the hands of various brokerage houses, to protect stock transactions. I do not believe that Mr. Anderson ever had in his hands over $5000, or $7000 at any one time during the summer.

85. When did you first see the interrogatories which are now being submitted to you by the Honorable John Glynn, Consular Agent, Truxillo, Honduras?

A. The interrogatories referred to herein were originally sent to John T. Glynn, Esq., at Truxillo, but as Mr. Glynn was absent from home, said interrogatories were sent by his representative, Mr. Lucius Freiberger, who has no power to take depositions, to Mr. George F. Davis, the American Consul at Ceiba. Mr. Davis exhibited these interrogatories to me for the first time last Saturday, December 30, 1911, for the purpose of making an estimate of how many words my answers would contain. This is the first time that I had seen these questions.

86. Did you receive copies of these interrogatories before they were submitted to you by Mr. Glynn for your answers? If so, from whom did you receive them?

A. I never received any copies of these interrogatories from anyone whomsoever. I had no knowledge of their nature at any time previous to the submission of them to me now at the taking of this deposition.

(Signed) John E. Humphreys.

The foregoing deposition with all seals and certificates thereto, is on file in the office of the Clerk of this Court, as a part of the record in this case.

Mr. Durrell: If Your Honor please, that is our case, in so far as it is now before the court. I have some witnesses as to the value of the property.

There is one point upon which I would like to introduce some testimony by Judge Davis.

Wednesday Afternoon Session.

March 27, 1912.

Judge David Davis,

called in behalf of the trustee in bankruptcy, being first duly sworn, testified as follows:

Examined by Mr. Durrell:

Q. Judge Davis, I would like to ask you whether you were acquainted with John Humphreys on or about August, 1910?

A. Yes.

Q. Did you know anything about his financial condition at that time and since?

A. Well, I only know since by an examination of the records. I have been retained as attorney in a number of matters and that is how I got acquainted with it; that is the only way. As to knowing things at that time, I would have to say no.

Q. As a matter of fact, considering these subsequent conditions, can you state as a fact that he was insolvent at that time?

Mr. Oppenheimer: I object and would ask that an exception be noted. The witness has said that his only knowledge has been gained from an examination of the record. Naturally therefore, the records themselves would be the best evidence; the records themselves should be introduced, or their absence accounted for.

The Court: There will be no dispute on that proposition, of course.

Q. I thought possibly that the point of insolvency at that date might not be questioned?

The Court: They do question that; they say you must prove it by the records.

Q. Judge Davis, is there any other way you would know whether or not John Humphreys was insolvent at that time?

A. When we say records now, for instance I examined the records in the Graves Estate; I have been retained as counsel in that case.

The Court: You got your knowledge from what you found there?

A. From what I found there and from the records of the Probate Court.

The Court: We could get it by examining the same records, I suppose?

A. You would have to have somebody—something beyond the record.

Q. Do you base your entire knowledge upon those records?

A. Not all together, no, because I got my information from people he owed the money to, so it is the records and the information jointly.

Mr. Oppenheimer: I take it that is doubly objectionable, in that it is both record and hearsay information.

A. And then a variety of causes too, I have a number of mortgages in my office now.

Q. Judge Davis, I will ask you this question: Are you in possession of information that would justify you in stating as to whether or not John Humphreys was insolvent at the date of the execution of this deed?

Above question is objected to.

The Court: Of course that is objectionable. Have you any way of showing what his estate and what his debts were at that time?

Mr. Durrell: Only in this way: This Court is in possession of matter of that sort; there are some $60,000 worth of claims—

The Court: What estate did he have at that time?

Mr. Durrell: That I haven't got. Of course when he went into bankruptcy, it was in January. I thought possibly in view of the motion pending here to suppress the deposition I could put it in on account of that fact?

The Court: In the interests of justice I would do a great many things, but in these circumstances I don't think we ought to have the case kept open.

Mr. Durrell: I do not now anticipate or expect that the deposition will be suppressed, but I thought it would be better to get this evidence in. I can withdraw this witness for the present, then. If this information can be obtained a little later, would Your Honor take it then?

The Court: Assuredly; it is a part of the case. I suppose it will be admitted that he owed some $60,000. What were his assets at that time?

Judge Davis: All we know now is that it was this house; the Michigan property went for $2,000.

The Court: What books of account did he have, or what books did he keep?

Judge Davis: Nothing.

Mr. Durrell: There are a lot of books over there, but no assets; he has had no assets since I have known anything about this.

Mr. Heintz: He was a broker and he was handling collateral and if these witnesses or these records would show what collaterals he did or did not have on the date in August in issue, then of course we think that would be proof; but from what counsel on the other side say now, I suppose they are not able to say what stocks, bonds, loans, or collateral Mr. Humphreys had in August, 1910.

The Court: Do his books show anything at all?

Mr. Durrell: Simply show a lot of margin business; you will find page after page of margins, but no footings.

The Court: What does his bank account show as to that date?

Mr. Durrell: There are stubs there that show some-memoranda?

The Court: Why don't you have all the testimony you can get on the subject of insolvency?

Mr. Durrell: We consider that that was all there was in the case. We could not get a statement of his exact condition at that time. His whole business for the last two years has been simply a margin busin[illegible]s; there are no footings.

The Court: Did anybody search the record today as to whether he had any real property?

Judge Davis: I have searched.

Mr. Durrell: Yes; he has had nothing on record except these two houses, the one here and the house in Michigan, for several years.

The Court: Did anybody inquire as to a safety deposit box?

Judge Davis: Yes; we broke his safe open, as well as the safety deposit box. We could not find anything.

The Court: Are his books in such shape that they show continuous transactions for the past year or two?

Mr. Durrell: It shows accounts with these people who were loaning money; he has some accounts like that, but principally where he had other people's money and had used it. I can show that in July last he took of Mrs. Brown's estate $7,500 out of her estate at that time and went into bucket shopping. I can show that by Mr. Lawrence Maxwell.

The Court: You ought to make your case when you come here.

Mr. Durrell: I will ask to withdraw Judge Davis for the present and with the Court's permission I will put Mr. Donohue on the stand. He can state what he found at the time he went into possession of this bankrupt's estate. Would that be satisfactory to the Court?

The Court: I can not decide that in advance. You must make your case.

Thereupon

E. Reeder Donohue,

Trustee in bankruptcy, being first duly sworn, testified as follows:

Examined by Mr. Durrell:

Q. What is your official capacity in this case, Mr. Donohue?

E. Reeder Donohue.

A. I am now trustee in bankruptcy of the estate of John E. Humphreys.

Q. When were you appointed trustee in bankruptcy?

A. I think it was sometime in February. I had been receiver prior to that time.

Q. When were you appointed receiver?

A. Early in January.

Q. Since you have been receiver and trustee in bankruptcy, what is the condition of John E. Humphrey's estate, as you found it?

Mr. Oppenheimer: We object and ask again our exception, because of the fact that that refers to the time of the appointment of Mr. Donohue as receiver. In other words he is seeking to prove the condition of this case in January, when we must know it in August of the preceding year.

The Court overruled the objection, to which ruling of the Court Mr. Oppenheimer excepted.

A. Well, I found some office furniture and a safe in his office. I had the safe opened.

The Court: When was this?

A. In January, somewhere about the tenth or fifteenth of January, 1911. I had the safe opened and found books and papers, but nothing of any value. I had his box in the Safe Deposit Department in the Central Union Trust Company, opened; I found there nothing of any value. I found that he had a balance to his credit in the Second National Bank of one or two dollars and a similar amount in the Fourth National Bank. I also found that he was the owner of a few shares of stock, Fourth National Bank Stock, which had been hypothecated with the Brighton German Bank, which was sold and I received the balance, amounting as I recollect, to about $100.

The Court: How long had that loan been running?

A. That I can not say, Your Honor; I never inquired.

The Court: Did you inquire what balance he had in the banks, and in the Fourth National Bank as of the date in August?

A. I did not.

Q. Did you find any other collateral loans anywhere in your seeking about to find the assets of the state?

A. No; those matters which I have just stated were all of the estate that I have discovered, with the exception of the claims now in litigation for the house in Norwood, a similar claim upon the house in Michigan and one or two boats that he had in Michigan.

The Court: What was the house in Michigan?

A. It was his summer home.

The Court: Was it a large house, a large property?

A. I never saw it, Your Honor; the only information I have is what I derive from Mr. Durrell and from the deposition which has been read, that the house was turned over to Mr. Justus at $2300. I think the total receipts, of the assets, I may say, have been sold by me except these houses; the gross receipts were somewhere from $500 to $600.

Q. In looking over his books, you have the books in your possession, did you find where anybody was owing him, or that there were any large sums handled?

Mr. Oppenheimer: We object; the books themselves would be the best evidence and if accessible they should be produced.

The Court sustained the objection.

A. Your Honor, I may say it seemed to me practically impossible to make any compilation from the books; while I find a few promissory notes, I made some inquiries about these promissory and those were all of the assets that I found, outside of what I have mentioned.

The Court: What were those notes?

Q. Worthless notes?

The Court: Have they been proved worthless?

Q. No, but I may say they were worthless?

The Court: Well, you are not testifying just now.

Q. Did you make any examination of the record to see whether there was any real estate beside the Norwood property?

A. Yes, sir.

By the Court:

Q. Did you find any other property?

A. I did find a lot on McMillan street, but in searching the record further, I found he had sold the lot, although at that time it stood in his name on the tax duplicate.

Q. Are you able to say that so far as the record discloses there is no other real property belonging to him, or there was not on the sixth of August, 1910?

A. I am able to state there is no other real estate belonging to him, as shown by the duplicate of Cincinnati and the duplicate of Norwood. I may explain to Your Honor that it would be a tremendous undertaking to go to each place, as the taxing properties are separated now, but these two places, where there was likely to be anything found, were the Cincinnati and the Norwood duplicates and there was no other property in his name there. I want to make a slight correction—with the exception that in the rear of what is known as the Norwood property, the Cameron Avenue house, there is a lot about forty feet by fifty adjoining the property con-

veyed to Mr. Carey; it is a part of the back yard; the title to that was not passed by Mr. Humphreys to Mr. Carey; it is still in Mr. Humphrey's assets and may be used as a back lot either to the house on Cameron Avenue or the house back of Cameron Avenue, fronting on the next street. It is of small value. That is all the real estate there is.

Q. Did I ask you—I think I did and that you said no —whether you had looked into the condition of his bank account as of August 6th?

A. Not as of August 6th.

Q. Or about that time? I think it would be well to do so.

A. I will do that, Your Honor.

Mr. Oppenheimer: May it please the Court, I think we have nothing in the way of cross examination, but I shall ask that the testimony of this witness be excluded for the reason that it refers entirely to the condition of the estate in January, 1911, presumably about six months after the transfer of this property and we have as against that the evidence of the bankrupt himself to the effect that he continued to make payments practically up to the time he left Cincinnati, which was December 20, 1911.

The Court: Have you any evidence showing his transactions with other people, fraudulent transactions by which he got money during that time?

Mr. Donohue: No such evidence has come into my hands as trustee.

The Court: Well, as to counsel—have you any such information?

Mr. Durrell: Yes. Judge Davis suggests that we have, that there is plenty of evidence of that sort.

The Court: Do you not see how that would reflect upon his statement? He might be paying all demands upon him, and yet paying it out of money he was stealing from somebody else.

Mr. Durrell: Evidently that was what he was doing.

The Court: You are making your case now.

Judge Davis: I will bring over the mortgages.

The Court: I expect the case will have to be put over until sometime when you can do so.

Mr. Durrell: We can get all kinds of testimony of that sort.

The Court: I know; but do you not see what you will have to do? You have got to prove your case.

Mr. Durrell: I want to put in all the evidence I can.

Thereupon an adjournment was taken to Monday afternoon, April 8th, 1912, at which time the further hearing of the case was resumed as follows:

Province M. Pogue,

called in behalf of the trustee in bankruptcy, being duly sworn, testified as follows:

Examined by Mr. Durrell.

Q. Mr. Pogue, this is an action by the trustee in bankruptcy against Walter J. Carey; I wish to ask you if you know of any debts that John E. Humphreys owed about August or thereafter of 1910?

Above question is objected to.

The Court: The witness ought to be identified more; we do not know what relation he sustained to the subject matter.

Q. Mr. Pogue, were you in any way associated with any of the creditors of John E. Humphreys in this action?

A. We were counsel for several of the creditors of John E. Humphreys.

Q. Will you state to the Court then what accounts you have in your possession against John E. Humphreys?

Mr. Oppenheimer: We object; the objection being that the mere fact they have in their possession certain claims against John E. Humphreys or against the trustee in bankruptcy does not throw any light upon our controversy at all. They are endeavoring to prove the insolvency of John E. Humphreys.

The Court overruled the objection, to which ruling of the Court counsel for the defendants at the time excepted.

A. We have nothing strictly as accounts; we have notes.

The Court: Do you know whether they are his notes, that he made the notes?

A. Personally, I do not, Your Honor.

The Court: Do you know his signature?

A. I don't know his signature.

The Court: Then we can not have this testimony about the notes. You will have to have somebody prove the notes, if they are notes of Humphreys.

Mr. Durrell: I will withdraw the witness for the present. We shall want to prove those notes, those signatures.

Thereupon

Judge David Davis

resumed the stand and testified further as follows:

Examined by Mr. Durrell:

Q. Judge Davis, you have been sworn, have you not?

A. Yes, sir.

Q. I hand you some papers and notes that were presented here by Mr. Pogue; will you look them over and see what they are?

A. (After examination): I have seen them before.

Q. What are they?

A. One is a mortgage and note supposed to have been executed by Edwin Shawhan to Kate Curtis, for $2500; another is a note and mortgage supposed to be from George Ridge to Kate Curtis, for $2000, dated February 1, 1909. I don't know this date of the other—let me get that date—the note and mortgage for $2500, dated January 6, 1910; the first one is $2500 and the second is for $2000.

The Court: $4500?

A. $4500, both of them.

The third is a note for $1000 secured by a mortgage supposed to have been given by James L. Wayne, on property supposed to be in Cincinnati, Hamilton County, Ohio. Mr. Wayne is right here and can testify personally himself about this—I mean he is in the court room now.

The other is a note and mortgage dated April 2, 1910, for $2500, supposed to have been given by Matilda Heyl to Frank M. Curtis and Frank M. Curtis is the husband of Kate Curtis. I examined all these papers before they got into the hands of Mr. Pogue.

Q. Who signed those papers?

A. I have examined them and I have examined Mr. Humphreys' signature; I have a letter here from Mr. Humphreys in my hand; I have a letter here that explains the whole situation. These are signed by Mr. Humphreys and every one of them is forged; all of these signatures are Mr. John E. Humphreys' handwriting.

Mr. Oppenheimer: I desire to object to the testimony, unless we ascertain the means of knowledge of the witness.

The Court: You may cross examine.

Q. Are you familiar with the signature of John E. Humphreys?

A. I have been familiar with Mr. Humphreys' signature for more than twenty years.

Q. Are those papers signed by John E. Humphreys?

A. They are in his disguised handwriting.

Q. You have a letter, have you not, from John E. Humphreys which was in answer to questions that you

put to him to get information, in your possession now, have you?

A. I have.

Mr. Durrell: I desire to introduce that letter.

Mr. Oppenheimer: We object to it.

Mr. Durrell: It is the foundation for these other things that might have gone in before; I would like to present that letter now, it is an answer to certain questions bearing on this very point.

By Mr. Durrell:

Q. I will ask you, Judge Davis, if that is John E. Humphreys' letter? (Exhibiting letter.)

A. This is the same handwriting of the letter I received from him written at Truxillo, Central America. I know it to be his handwriting; I have no hesitancy in saying so.

Mr. Oppenheimer: We still object to the introduction of the letter.

The Court: When was the letter written?

A. It was written July 3, 1911.

The Court: After the date of the deeds that are in controversy?

A. Yes, sir.

The Court: Then we are not concerned about it.

Mr. Durrell: This is in answer to the twenty-five questions we put to him and that he declined to answer.

The Court: The objection will be sustained.

Mr. Durrell: For the present, I would like to withdraw Judge Davis from the witness stand. I want to call Mr. Pogue again.

Thereupon

Province M. Pogue

resumed the stand and testified further as follows:

Examined by Mr. Durrell:

Q. Now I will ask you, Mr. Pogue, if those notes that have been identified by Judge Davis as being the signature of John E. Humphreys, if any of those claims have been paid?

A. They have been partially paid and I can explain that by stating that we brought a suit in the Common Pleas Court of Hamilton County, Ohio, in behalf of Kate S. Curtis, by permission of the Attorney General, on his bond; that bond was in the sum of $1500; that case included these notes, amounting to $8000. Another note which we represented with Thomas Philips of St. Louis, forged in the same way, for $4000 and there was also included in that, if I recall, other notes amounting to about $3000 represented by Judge Davis, and in the distribu-

tion of that $1500 on that judgment that we recovered on his bond, we realized something in the neighborhood of eight or ten percent, distributed among these various notes covered by the bond.

The Court: After the expenses were paid, about eight per cent was distributed?

A. Yes, just about.

Q. How much did Mrs. Curtis get, if anything at all?

A. There is $8000 owing to Mrs. Curtis, crediting about eight per cent on it with interest from the time he had got it, about a year and a half ago, when I think the last payment was made.

Q. That is all you have, is it, Mr. Pogue?

A. Well, outside of that bond, there was another note wherein he forged the name of Mrs. Pierce and sold that forged note.

Mr. Oppenheimer: I think this testimony is objectionable on the ground that the note itself is not here and not accounted for.

The Court: That seems to be well taken. Where is the note?

A. It was put in judgment, Your Honor.

The Court: The judgment record would be the best evidence then.

A. It is in the Common Pleas Court here.

Q. That is all, then; that answers the purpose; all we are here for is to show insolvency?

The Court: I know that, but you have to prove each step as you go along, for that object.

A. I did not get a chance to answer that question, but I will call counsel's attention also to another forgery perpetrated by Mr. Humphreys, wherein he forged our client's name again on a note and got $3000—forged a note and got $3000 for our note at the First National Bank, Norwood.

The Court: How do you know that?

A. Because we have been over the whole case and it is in a decree in the Common Pleas Court.

The Court: Then the decree will speak for itself.

A. The decree will speak for itself, yes.

By Mr. Oppenheimer:

Q. Mr. Pogue, do you know of your own knowledge anything about Humphreys' financial condition in the year 1910?

A. I was not acquainted with Mr. Humphreys at all in 1910.

Q. When were these various suits filed?

A. They were started, the first one, in January, 1911.

Q. That was after Mr. Humphreys had absconded?

A. Right after he disappeared, yes.

Q. In other words, these things developed after he had disappeared from the city and so far as any information concerning these forgeries is concerned, you obtained that information only after he had disappeared?

A. After he had left the city, yes.

Q. You know nothing whatsoever of his financial condition prior to the time of his departure from the city?

A. No, personally I know nothing.

Thereupon

Judge David Davis,

resumed the stand and testified further as follows:

Examined by Mr. Durrell:

Q. I will ask you if you have any claims in your hands against John E. Humphreys?

A. Yes, I have some of my own, individually.

Q. Will you state to the Court what those claims are and the amounts?

A. Well, the oldest one is dated June 2, 1910, and is a note for $1900 with a credit on June 17, 1910, when Mr. Humphreys paid me $300 on it. That is, Mr. Humphreys paid me on June 17th—it was a demand note on demand he paid $300; on July 5th, he paid $200; that was all that was ever paid on that note.

Q. Just state what else you have, Judge?

A. His promise was he would pay it within twenty-five or thirty days and I would have no trouble, and so on. The next note is dated December 15, 1910, which is a renewal.

Mr. Oppenheimer: I object; that was six months after this deed was given.

The Court: Was it in renewal of the same note?

A. In renewal of a note for $1200, made about the first of August, 1910; it was my own business, I let him have the money.

Q. What was that date?

A. This renewal note is dated December 15, 1910. The first note is for $1200; my recollection is it was a thirty day note, and the $1200 note, he brought that down and finally it was renewed for probably another thirty days. Then when it came along another thirty days, it was renewed; it was renewed two or three times, I don't recollect exactly; the last renewal was December 15th, 1910; that was the last day I ever saw Mr. Humphreys; he was at my office and gave me this note for $900. I did not discount it in bank, just carried it in my safe.

Q. Have you anything else?

A. Well, then I have another note that is dated of course after he went away, but that is in the same position as Mr. Pogue's notarial bond and that is given to me for William J. Philips, and Edwin Showhan, the mortgage and note that I have in my possession, placed in my hands for collection soon after Mr. Humphreys went away.

Q. Are you familiar with the signature on that note?

A. Yes, sir; this note was left with me as I say for collection and it is for $1400.

Q. Who signed that note?

A. Let me explain the matter: When Mr. Pogue brought the suit he spoke of a while ago, upon Mr. Humphreys' notarial bond, and when I got ready to file an answer and cross-petition in that case, I noticed this note and mortgage were dated June 30, 1908; upon reading that petition I saw that the notarial bond was, in that case, dated later than the execution of this note and mortgage and I saw in a minute that I could not come into that case and yet the acknowledgment of this mortgage was by John E. Humphreys, Notary Public. I immediately sent to Columbus to find out who was on Mr. Humphreys' bond, from June 30th, back. I got an answer that it was Mr. Willis Durrell and David Davis who were on that notarial bond. I immediately wrote to Mr. Humphreys the letter I have here in my hand. I wanted to ascertain if there were then any other mortgages in the same class, upon that bond, and here I was, collecting off of myself and I didn't want to pay my own client without ascertaining if there were any other notes and mortgages forged by Mr. Humphreys. He answered me back that if I would look—

Mr. Oppenheimer: We object to that.

A. Well, I got the information where to find the whole subject. I ascertained that this was the only mortgage of that kind; so I paid this mortgage of $1400 to my client, Mr. Phillips, without suit. This note and mortgage are signed by Edward Showhan, supposed to be. There was no such mortgage given, and not only that, but anybody who is familiar with Mr. Humphreys' handwriting can see in a moment that that is Mr. Humphreys' disguised handwriting.

Q. Are those all the claims you have?

A. Those are all the claims I have individually.

Q. Have you any other claim with which you are familiar?

A. Yes, here is Eliza Simpson.

Q. State to the Court about that?

A. Eliza Simpson gave a mortgage, supposedly, a note and mortgage to Mary Evans, dated July 1, 1909, for

$2100. Comparing this with all the others that Mr. Pogue speaks about and you can see that it is Mr. Humphreys' disguised handwriting, and yet this mortgage is acknowledged by Mr. Humphreys, taking the acknowledgment of the supposed Eliza Simpson and Charles W. Simpson, on property not in existence—

Mr. Oppenheimer: I object; the witness is reciting a great deal of information which is entirely improper, because there is nothing to connect it in this case. He is saying it is a mortgage upon a piece of property not in existence; I think that is entirely improper.

A. I didn't examine the record, but I know it by writing to the recorder and getting a letter back from the recorder.

Mr. Oppenheimer: That is all objectionable; Judge Davis certainly knows that it is.

The Court: Yes, that testimony won't do.

A. Now then, I have another note and mortgage in my possession for collection, made payable by one George Stubbs to M. E. Jones, dated December 10, 1909, for $1000.

Q. Who signed that?

A. Well, it was supposed that George Stubbs and Elizabeth Stubbs signed it and the acknowledgement is taken by John E. Humphreys, Notary Public.

Q. What is the amount of that?

A. $1000.

Q. Who signed it?

A. Mr. John E. Humphreys, it is his disguised handwriting, his signature to the mortgage.

Q. Well now, is there anything else?

A. There is another one of George Ridge to Jennie Jones.

Q. And how much is that?

A. $1000, dated January 26, 1909.

Q. Who signed that?

A. That is signed George Ridge; the acknowledgement is taken by John E. Humphreys. The note is signed George Ridge and Eliza Ridge; all three of the signatures are in Mr. Humphreys' disguised handwriting.

Q. Anything else?

A. That is all I have in my possession—no, I have then—I represent the Groves Estate of which Mr. Humphreys was the executor and trustee and he has filed in the Probate Court of Hamilton County three accounts, and if you gentlemen wish it. I have copies of the accounts, though I have the original accounts also here, but I have copies as well—

The Court: If you put in the account, let it go in subject to comparison with the original.

A. Here is a copy (handing paper to Mr. Durrell).

Q. State from the original account in your hands, the amount of money?

A. In his hands?

Q. Yes, the amount of money in his hands?

A. This is an account filed in the Probate Court of Hamilton County by John E. Humphreys, executor of the estate of John T. Groves, filed on February 12, 1903; in that account, the last item on the credit side is January 9, 1903, reading as follows: "To myself as trustee for Elizabeth Groves, $15,000."

Q. Do you know whether or not that account has been paid?

A. It has not. I have brought suit upon it against the Banker's Surety Company which is upon his bond for $15,000 and interest for something like two years. The Banker's Surety Company has filed an answer in the case. It seems that the last account Mr. Humphreys filed, simply accounted for the income, paying out the income, and had got his bond reduced to $10,000 in the Banker's Surety Company, claiming it is only liable for $10,000.

Mr. Oppenheimer: I object to this; this is all matter of record and should be introduced in the proper form.

A. We will furnish copies, or the original records, if it is necessary.

The Court: Yes, you must make your proof according to law. It is just like any other case. The objection to this last testimony is sustained and it goes out.

Counsel for the trustee excepted to the ruling of the Court.

Cross-Examination.

By Mr. Oppenheimer:

Q. You have testified that you are familiar with the handwriting of Mr. Humphreys and have been for a great many years. How long have you known Mr. Humphreys?

A. I guess about forty-two or forty-three years; he is forty-six years old this next July.

Q. You are related in some way?

A. None in the world.

Q. Are your family related in some way?

A. No, sir; my family is not related to him.

Q. You have been very close to him, however?

A. Oh yes, yes.

Q. You were personal friends for many years?

A. Yes.

Q. You made many investments through Mr. Humphreys, I believe?

A. No, I did not. Mr. Cane who is now President of the Walnuts Hills Savings Bank & Trust Company, he and I were directors in a little bank up the state and we used to loan to Mr. Humphreys, for the bank, a great many thousands of dollars.

Q. You have had a great many financial transactions?

A. Oh yes; I suppose probably at one time we would have $30,000 or $40,000 loaned to him.

Q. You were qualified to know something about Mr. Humphreys' financial standing in the community, what his reputation for solvency was?

A. His reputation was always good.

Q. Up to the time when he left the city?

A. I think it was; his reputation was good even up to the time he left the city.

Q. His reputation, not merely as an honorable man, but as a man of some property?

A. Yes—well, he never had any real estate much; his property consisted principally of stocks and bonds and valuable assets of that kind.

Q. But he was reputed, up to the time when he left the city, to be a man who was substantially fixed?

A. I think so; I never had questioned it, but I had no question about it; I wouldn't have loaned him that $1900 or the $1200, if I had.

Q. You saw him on the 15th of December, you say?

A. That was the last time he was at my office; he promised then he would pay that $900 in sixty days.

Q. You spoke to him about it—he stated he would pay?

A. Why, certainly.

Q. You accepted his note?

A. I accepted his note without any security; he was always prompt about everything, I thought.

Q. These various notes and mortgages which have been introduced by you, you told us they were in Mr. Humphreys' disguised handwriting; what did you mean by that?

A. Well, I meant that he signed the names of these people, forged their names.

Q. You do not pretend, I take it, to be an expert in chirography, or a handwriting expert.

A. Well I don't know; I think I am considerable of an expert; I have had a great many of these cases; in that then celebrated Hyndman case, in which forgeries of two deeds to the extent of about $50,000 or $60,000 worth of real estate was concerned, I made a great deal of a study about it then; not only that, but I have known through dealing with other cases.

Q. That was a case in which there were two deeds claimed to be forged?

A. And not only that, but I have had forgery cases before that.

Q. And you believe that all of these are in what you have termed Humphreys' disguised handwriting?

A. I not only believe it from what I think about it myself, but I am informed by Mr. Humphreys and if you gentlemen will give me permission, I will show you why I believe it. If you will give me that ledger I can show you why.

Q. Have you got your ledger here?

Mr. Durrell: I haven't got it here.

A. Well, you ought to have it here, because you can get the information where to find all the bad paper.

Q. You haven't that here?

Mr. Durrell: I have not, no.

Mr. Oppenheimer: That is all with reference to the letter which has been excluded by Your Honor.

The Court: I understand the witness now to say there was a ledger?

A. No, no; that only bears me out; the ledger shows the total amount which corresponds exactly with the total amount of paper in the different hands of the different holders.

The Court: Apparently he might testify on the subject without that letter.

A. If you will give me the ledger I will show you the whole business.

Mr. Oppenheimer: The testimony to which I objected was the testimony in which he spoke about a letter; I objected to him giving contents of that letter.

The Court: So far as the testimony refers to the contents of the letter, it will be excluded.

By. Mr. Oppenheimer:

Q. Judge Davis, at one time I believe you were actively associated in the practice of law with Mr. Humphreys?

A. No, no; he never was associated with me in the practice of law; he had an office, we were on the same floor of the Allen Building.

Q. Did you not have offices together?

A. Well, he was on the same floor in the same building.

Q. In the same suite?

A. Yes, he had a room to himself and I had a room to myself we had no connection with each other, except in the rental question; I paid him the rent.

Q. Your telephone never was in the name of Davis and Humphreys?

A. Oh yes, yes; that is right I believe. Now, you asked me about these different forgeries and so on; if you will take either one of them, you will see that Mr. Humphreys has used a little trembling method or whatever you might call it, in pretty nearly everyone of those different papers; you will see it in everyone, the same thing all the way through. Of course the handwriting is Mr. Humphreys' handwriting.

The Court: Were their claims filed with the referee?

Mr. Durrell: There have been, yes, a great many.

The Court: Other claims besides those of theirs?

Judge Davis: Most of these and some beside these, yes.

also

Thomas L. Wayne,

called in behalf of the trustee in bankruptcy, being first duly sworn, testified as follows:

Examined by Mr. Durrell:

Q. Mr. Wayne, just before I ask you about a certain paper, you are familiar with this case of Mr. Donohue, trustee in bankruptcy, against Walter J. Carey, that is now before the Court. I will ask you whether or not this is yours, that mortgage and if you signed that note and how much is it?

A. The mortgage calls for $1,000, supposed to be given by myself and wife to Mrs. Kate M. Curtis.

Q. Did you sign that note?

A. I did not.

Q. Did you and your wife sign that mortgage?

A. We did not.

Q. Or did you sign it?

A. No, sir.

Cross-Examination.

By. Mr. Oppenheimer:

Q. Mr. Wayne, how long have you known Mr. Humphreys?

A. Well, I knew him for some four or five years.

Q. Did you have any transactions with him of any kind?

A. I did; I bought a piece of property from the Isabelle Brown estate, of which he was administrator.

Q. Did you have the means of knowing his reputation as to solvency or insolvency?

A. Nothing very definite.

Q. What was your information, or your impression, or your own belief as to his solvency or insolvency?

A. Why, I considered that Mr. Humphreys was perfectly solvent; in fact, my general information was that

he was worth considerable money; all his transactions with me were O. K., straight.

The Court: It is denied that his reputation, his financial reputation was good?

Mr. Durrell: No, that is not in question.

The Court: If the other side concede that and you admit that it was good up to the time he ran away—do you admit that up to the time he left that he bore a good reputation for meeting his obligations?

Mr. Durrell: Why yes; we are not questioning that; it is simply a question of whether he was insolvent, actually so.

The Court: That may be regarded as proved then.

Thereupon

E. Reeder Donohue,

resumed the stand and testified further as follows:

Examined by Mr. Durrell:

Q. Mr. Donohue, will you state to the Court please if you have had the present assets of the estate of John E. Humphreys, bankrupt, appraised since the day you were here last week?

A. I have had the notes which came into my possession, appraised, the promissory notes which were found among the assets of Mr. Humphreys.

Q. Please state what that appraisement shows?

A. They vary in dates from 1896 down to 1910.

Q. What is the face value of them?

A. About $11,500. They are appraised at nothing.

Q. Nothing?

A. Nothing, yes. They were appraised, I will state, by the appraisers who were regularly appointed by the referee in bankruptcy.

Q. Have you the bank book showing the balance of John E. Humphreys account with the two banks in which he kept accounts?

A. I have the bank book and the returned checks and also as the Court requested me to, I have secured from the two banks a statement as to the balance in the Second National on August 5th, 1910, when Mr. Humphreys' balance was $135.33. On August 10th, 15th, 20th, and 25th, it was 35 cents. In the other bank, the Fourth National the balance on August 10, 1910 was $220.37; on August 15, 1910, $291.05. August 20, 1910, $1,366.21; on August 25, $1,253.51. Today there is a balance of $1.50.

Cross-Examination.

By Mr. Oppenheimer:

Q. Mr. Donohue, it is a fact, is it not, that it was generally understood that up to the very time of Mr. Hum-

phreys' departure he had large sums, or large amounts of notes, stocks, notes and so on as collateral security for loans in banks?

Mr. Durrell: I object, unless he is qualified; he may know nothing about this.

The Court: Well, he is asked if he has any knowledge; it may be he has knowledge.

Mr. Durrell: If he has knowledge, then go ahead.

A. I had no personal knowledge of Mr. Humphreys' financial condition prior to his leaving the city in January, 1911.

Q. Do you know of your own knowledge whether he had any other bank accounts than the ones about which you have let us know?

A. I do not, excepting that there was an account at the Cincinnati Trust Company in the name of John E. Humphreys, Executor and Trustee, not an individual account.

Q. But you do not know whether he had any other account at any other bank?

A. I do not.

Q. Either locally, or elsewhere?

A. I do not. I do know this: That he had a loan from the Brighton German Bank for which he had put up some Fourth National Bank Stock as collateral; that bank sold that stock and turned over to me as the balance due to Mr. Humphreys a small sum of money, $93.40.

Q. Do you know whether or not Mr. Humphreys took any securities with him at the time of his departure from the city? I mean, do you know that of your own knowledge?

A. I do not.

Q. All that you know is that these notes were found in either the safe which was broken open by you, as you described upon the last hearing, or in the Safety Deposit Box at one of the banks?

A. Yes.

Q. But you do not know of your own knowledge whether he had any other Saftey Deposit Box or any other papers except those that you actually found?

A. Of my own knowledge, I don't know.

Q. You don't know of your own knowledge?

A. No.

also

J. Stanley Rhine,

called in behalf of the trustee in bankruptcy, being first duly sworn, testified as follows:

Examined by Mr. Durrell:

Q. Mr. Rhine, were you acquainted with John E. Humphreys?

A. I was.

Q. Where were you in August, 1910, in business?

A. 802 Mercantile Library Building.

Q. Was that in the same office with Mr. Humphreys?

A. Yes.

Q. Were you in a position to know anything of John E. Humphreys' affairs?

A. While he was away I was looking after his affairs, in a general way, for him at his request; that was during the summer of 1910, part of that summer.

Q. Did you know of your own knowledge anything of his financial condition at that time?

A. Well, I know that at several times during the summer he did not have money to meet some obligations that he had made and at one time he was, according to his statement—

M. Oppenheimer: We object to that.

Q. Only tell just what you know?

A. Well, at one time he asked to borrow some money from me and I loaned him $50 which he had for about three weeks until he made some deal he told me of and returned the money to me.

Q. Did that matter of making a loan occur only once, from you?

A. That was the only time I made him a loan.

Q. Did you know of his being unable to meet his margins frequently?

A. Several times he was unable to meet them and at one time it went on for a matter of—well, it must have been close to two weeks, the margins ran on him and he was worried that he couldn't meet these obligations, meet these margins and finally one day he told me that he had made a deal—

Mr. Oppenheimer: I object to what Humphreys told him.

Q. Yes. Don't tell that, but go on and tell what you know about that deal, if you know anything about the deal, from your own knowledge?

A. I don't know what deal he made; all I know is he got some money and I saw him hand a thousand dollar bill to Mr. Carey, W. V. Carey, in the brokerage office over there, W. V. Carey & Company, over in the Carew building.

The Court: Where did you see that?

A. In the office of Mr. Humphreys.

The Court: When?

A. I would say it was right along the first part of August, 1910.

J. Stanley Rhine.

Cross-Examination.

By Mr. Oppenheimer:

Q. Mr. Rhine, you say that on this occasion you saw him hand a thousand dollar bill to W. V. Carey, is that correct?

A. That is the way I recollect it.

Q. That is your recollection?

A. Yes, sir.

Q. That is not the same Carey who is defendant in this case?

A. No, sir.

Q. How do you fix that date as being the early part of August, 1910?

A. From the fact that in July, the last part of June or the first day of July, I was up at Lake Catawbe with Mr. Humphreys; Mr. Humphreys returned I believe on the third and I returned on the fifth or sixth and I know that it must have been about three weeks after that time.

Q. What were you doing at Lake Catawba, or rather what was Mr. Humphreys doing up there?

A. Just went up there for a little recreation.

Q. Where is Lake Catawba?

A. It is between—it is about ten miles east of Port Clinton on Lake Erie.

Q. How far was that from Burt Lake where Mr. Humphreys had his summer home?

A. Several hundred miles.

Q. Did Mr. Humphreys go to Burt Lake during that summer also?

A. Yes, sir.

Q. Was that before or after this one thousand dollar transaction?

A. He went to Burt Lake after this transaction.

Q. Then after this transaction you refer to with W. V. Carey and Company he went to his summer home on Burt Lake, Michigan?

A. Yes.

Q. So far as you know, did his wife go with him at that time?

A. She went with him.

Q. He took his family away for the summer to his summer home?

A. Yes.

Q. There were numerous transactions, were there not, where Mr. Humphreys would give you checks while you were in his office?

A. Yes.

Q. Did those all relate to deals or transactions in which he had been engaged?

A. They related in nearly all the cases to deals in the market, stock market.

Q. Stock market deals?

A. Yes.

Q. Did he continue in those transactions and continue to give you checks to carry him through these various transactions, up to the time when he left the city?

A. I did that only while he was away from the city.

Q. But he did do that while he was at Burt Lake, after August, 1910?

A. Yes, while he was at Burt Lake is when he did it.

Q. That was after August, 1910?

A. Well, it was sometime in the latter part of July, at least.

Q. During July, August and September?

A. Sometime in that period.

Q. As a matter of fact he remained away until the latter part of the summer in that year, did he not?

A. He did.

Q. During that time, he would from time to time send you checks covering certain of these transactions in which he was engaged?

A. Yes.

Q. Have you any idea as to the aggregate of the amount of checks he sent you?

A. Well, in all not over $1,000 or $1,500, I shouldn't think.

Q. Don't you think it was more than that?

A. I wouldn't think so; I would not say positively.

Q. It might have been?

A. It might have been perhaps $500 more.

Q. Who else was in your office at that time, beside yourself and Mr. Humphreys?

A. Mr. Sterne.

Q. Anyone else?

A. A stenographer.

Q. Do you remember who that stenographer was?

A. During the early part of the summer it was Miss Florence Elry and I can not just tell you what time but later on, Miss Margaret March.

Mr. Durrell: I want to call Mr. Joseph Lackner later to show that Mr. Humphreys had about from $8,000 to $12,000 of the Brown estate.

The Court: Very well.

Thereupon

E. Reeder Donohue,

recalled for further cross-examination, testified as follows:

Examined by Mr. Oppenheimer:

Q. Mr. Donohue, I want to ask you whether the stubs of Mr. Humphreys' check book are in your possession as trustee?

A. There are a number of check book stubs, but how many of them are there, and how many are not, I don't know; there are a number of them.

Q. These check book stubs show a great number of financial transactions by Mr. Humphreys, do they not?

A. They show a great many transactions, but I have not carefully gone over those stubs; I have not been called upon to do it; I did not know that there was any occasion for it.

Q. Can you tell us whether the transactions as shown by those check stubs apparently continued down to the time of Mr. Humphreys' departure from Cincinnati?

A. I can't tell you from the stubs, but I can tell you from these bank checks, I think.

Q. They would relate only to the two banks; I mean all the checkbook stubs that you may have?

A. I don't know that there are any others; I don't know of any others.

Q. Well, do the books in your possession there, those two bank books show that his financial transactions continued down to the time of his departure?

A. Oh, they did continue down to his departure, until that time, but there were not a great many of them.

Q. May I look at those a moment longer?

A. Certainly. (Checks are handed to counsel): They are, I think, in chronological order, so that if you take the back ones you can see.

Q. Mr. Donohue, I show you ten checks on the Second National Bank and ask you whether those related to financial transactions subsequent to August, 1910?

A. They do.

Q. Among those checks is one dated December 3, 1910, payable to Grace Johnson for $1,000; so far as you know that is a genuine check of John E. Humphreys?

A. I don't know a thing about it.

Q. And it indicates that it was paid through the Second National Bank, does it not?

A. As far as I know.

Q. Another check to the Central Trust & Safe deposit Company, dated December 19, 1910, for $1,520, apparently paid through the Second National Bank?

A. It would so appear.

Q. So, that so far as the Second National Bank is concerned, these financial transactions continued down to the time of his departure and some of them were for substantial amounts, that is correct, is it not?

A. I should say it was; I know nothing about it except what these checks show.

Q. I hand you also fifteen checks on the Fourth National Bank and ask you whether apparently those are not all transactions which occurred subsequent to August, more specificially during the months of October, and November, 1910?

A. Yes.

Q. So, that so far as these checks here show he continued his financial transactions through the Fourth National Bank down to the time of his departure?

A. Approximately. The last of these—I see no checks after November.

Q. There was none in that bank during the month of December?

A. I don't see any here.

Q. But you will note that the last one is payable to bearer for $600 and endorsed by Mr. Humphreys in November, 1910, is that correct?

A. November 15, 1910.

Q. Payable to bearer and endorsed by Mr. Humphreys?

A. Yes, sir.

And the foregoing was all the testimony in chief offered by the trustee in bankruptcy.

Joseph Lackner,

Called out of order by the trustee, being first duly sworn, testified as follows:

Examined by Mr. Durrell:

Q. Mr. Lackner, what is your business or occupation?

A. Attorney at law.

Q. What business have you had with John E. Humphreys in the past?

A. In the past ten years, in connection with his administration of the estate of Isabella Brown, deceased.

Q. Do you know what amounts, if any, he handled for this estate?

A. He was appointed executor of the estate in 1899 and offhand, I should say that since then and up to the present time he has handled in the neighborhood of $300,000 for that estate. By that I mean he has converted notes, stocks, bonds and mortgages, etc., into cash and

disbursed the major part of it to the beneficiaries under the will.

Q. How much of that money that he has received, has he retained?

The Court: You may cross examine now, Mr. Oppenheimer, if you like?

By Mr. Oppenheimer:

Q. I want to ask you the source of your knowledge about matters as to which you are asked?

A. As to $7,000 of the money that he has collected and not turned over to the beneficiaries, I have personal knowledge, through having negotiated the matter, investigated the matter, because of the purchaser of the ground rents, to whom he sold that ground rent. I have in my possession here today the check which was given by Shoemaker & Bose, the purchasers of that ground rent, to Mr. Humphreys as executor, for $7000, which check is canceled. Now, there are other matters which Mr. Hemphreys has collected in the neighborhood of $5000, of which I have more or less personal knowledge. By that I mean one of the matters occurred in Chicago and through our communication with our Chicago correspondent, Mr. Charles Aldridge, an attorney of that city, I know the amount he collected there, which has not been turned over.

By Mr. Durrell:

Q. Mr. Lackner, do you know how much John E. Humphreys owed to the Brown estate when he left here in December, 1910?

Mr. Oppenheimer: I desire to ask that the witness qualify his answer to that, by reference to what he knows of his own knowledge.

A. I was going to do that. When Mr. Humphreys left here in December, 1910, I had only personal knowledge of this one item that I have heretofore testified to, namely, the sale to the Shoemaker people of the ground rent for $7000.

By Judge Davis:

Q. The $7000 has not been paid to you since?

A. It has.

Q. But not by Mr. Humphreys?

A. No, sir.

Q. Paid to you by his estate?

A. It was paid to us by the American Bonding Company, of Baltimore, on his bond.

Walter J. Carey,

the defendant, called in his own behalf, being first duly sworn, testified as follows:

Examined by Mr. Heintz:

Q. Mr. Carey, your full name is what?

A. Walter J. Carey.

Q. What is your business?

A. Insurance and real estate.

Q. And the name of your concern is what?

A. Carey & Zimmerman.

Q. Where is your business located, or your offices?

A. Room 15, number 41 East Fourth Street, Fosdick Building.

Q. How long have you been in business in Cicinnati?

A. You mean in this particular business?

Q. Yes?

A. About eighteen years.

Q. You live where?

A. Norwood.

Q. Were you acquainted with Mr. John E. Humphreys?

A. I have known him for twenty-five years.

Q. Do you know where he lived prior to December, 1910?

A. On Cameron Avenue, Norwood.

Q. How long did he live there?

A. About fifteen years, twelve or fifteen years, I should judge.

Q. Did he live in the real estate involved in this litigation?

A. No. 2222 Cameron Avenue, Norwood, yes.

Q. And he lived there how many years?

A. Well, ever since he was married, I think, the whole time.

Q. He built the house—or who did build the house?

A. Why, our firm; it was known then as the Carey-Trimble Company.

Q. Were they contractors and builders?

A. Contractors and builders.

Q. Now Mr. Carey, in the early part of 1910, or rather prior to 1910, in what business was Mr. Humphreys?

A. Mr. Humphreys was a broker, or a dealer in stocks and bonds.

Q. Did he practice law prior to that, to your knowledge?

A. He had; he was connected—I don't know that he was connected directly, but he had an office with Davis, Durrell & Humphreys.

Q. Whereabouts?

A. In the building at the corner of Fifth & Main.

Q. Where was he in 1909 and 1910?

A. He was then located in the Mercantile Library Building, third floor.

Q. Did he have a ticker in the office?

A. He did.

Q. Now Mr. Carey, did you have any business transactions with Mr. Humphreys as a broker, prior to January, 1910?

A. In 1907 I think my connection with Mr. Humphreys began; I think it was in April 1907, that I gave him the first order for the purchase of stocks for me.

Q. How did you come to do that?

A. Well, I had known Mr. Humphreys for a long term of years; my original acquaintance with him dated back to 1885 when I moved into the house directly after I was married, I moved into a house owned by Mr. Humphreys' mother; I lived there about a year or two and then moved to Norwood, after which I engaged in the building business and one of the houses built by our firm was this house on Cameron Avenue in Norwood.

Q. Did you do any other building, or sell him any other real estate?

A. He had sold us real estate.

Q. He had sold you real estate?

A. Well, he had not up to this time; but that was afterward. After we built this house—we built it for sale, you know—Mr. Humphreys came along as one of the prospective customers and liked this house and purchased it. At that time I lived on Cameron Avenue almost directly opposite the house that Mr. Humphreys purchased; after Mr. Humphreys moved into the house, his family and our family became very very well acquainted, in fact we got to be extremely good friends.

Q. Well, in 1907 when he was in the brokerage business, were you good friends.

A. Yes, sir. Now, this won't take very long, if you will let me tell it in my own way, I will get through with it quicker. I can tell it better in my own way, if you will let me. During the years 1904 and 1905, Mr. Humphreys had a number of times invited myself and family to visit him at his summer cottage and in 1904 my daughter and I went and spent a couple of months with him—I think it was a month—about a month I think, and the next year, I believe it was, my wife and I and daughter spent a few weeks with him at his summer cottage.

The Court: At Burt Lake?

A. At Burt Lake. During this period Mr. Humphreys frequently talked to me about the purchase of

stock; it was a business with which I was unfamiliar at the time and he told me that he was doing business for others—

Judge Davis: I don't see how this can be competent.

Mr. Oppenheimer: I think it is entirely competent as reflecting upon this man's knowledge and intent in this transaction.

A. I was asked the question as to how I happened to be doing stock business with him.

The Court: It doesn't make any difference really, the question as to what stock dealings he had with Mr. Humphreys. They were apparently good friends and he had confidence in Humphreys.

Mr. Oppenheimer: Humphreys has testified as to what he said to Mr. Carey, as to what his intention was when he made the deed.

Judge Davis: That is a different matter.

The Court: If it has to do with their dealings in stocks, we are not concerned with that.

Judge Davis: I will withdraw my objection; we will get through quicker.

Q. Go on then, Mr. Carey?

A. Well, as I started to say, during the visit up there he described to me about these stock transactions and he told me about how they were conducted and told me the different dealings that he had.

Judge Davis: He was educating you then?

A. Educating me, yes. He told me of one specific instance of L. & N. stock, in 1904—

The Court: We are not concerned with that.

A. Well, in 1907 to the best of my recollection I think it was in April, I gave Mr. Humphreys my first order for Northern Pacific, twenty-five shares of Northern Pacific, and at other times during the year, I gave him other orders. I gave him orders to sell certain stocks; Mr. Humphreys executed the orders and furnished me statements from time to time of the account. Our transactions ran from 1907 until 1909.

Q. Now then, did you have a settlement in 1909, or 1910?

A. In 1907, we had a settlement. It was subsequent to the panic of 1907, at which time the Standard Oil Company had been involved and had been given a fine and costs and had gone down considerably; at that time we had a settlement; I had paid Mr. Humphreys something like $1300 in cash and I got about $450 or $430 back.

Q. At that settlement in 1907?

A. It was about $400.

Q. Did you have a settlement again in 1909 or 1910?

A. Now, after the panic had subsided to a certain extent and things began to a certain extent on the up grade, I again gave Mr. Humphreys certain monies and instructed him to buy for me certain stocks. He gave me settlements from time to time, or statements. Mr. Humphreys in 1908 and 1909, during the summer, went to his summer home. During the summer of 1909 there was quite a flurry on account of the illness of Harriman which had to a great extent affected conditions. I wrote to Mr. Humphreys at his home at Burt Lake, telling him that I desired to close out all my trades, all my purchases and retire from the market. I received a letter from him, from Burt Lake, in which he gave me certain advice—

Q. —Never mind that now, just come down to the settlements, or the settlement, if there was one in 1910?

A. I am trying to tell this. Well, in 1910, on January 4th, Mr. Humphreys being in his office, I went over to his office. He had at different times spoken as though the market was going up. On January 4th, I went over to his office and told him that I wanted a settlement on that day's basis; I wanted my stock sold. We had a settlement and at that time he owed me somewhere about $14,000 or $15,000.

Q. Did he give you any note or obligation for that amount?

A. He gave me notes aggregating the amount of $14,000.

Q. What amount of those notes, if any was paid?

A. Why, none of those notes was paid. He had given me some notes previous, I think in November previous and in September; those notes were made for sixty and one for thirty days, I think; they ran out in January and February.

Q. Were they paid?

A. They were paid. They had nothing to do with the $14,000.

Q. Now, the notes for $14,000 that was given in January 1910, were any of those paid on August 6th, 1910, or prior thereto?

A. No, sir. He had renewed some of them. All the notes had fallen due, all the notes but one, is my recollection, that there was one note that fell due in November and that was in bank and the other notes he had not paid.

Q. Did you meet Mr. Humphreys on August 6th, 1910?

A. I went to Mr. Humphreys' office.

Q. Whereabouts?

A. Over in the Mercantile Library Building.

Q. Did you see him there?

A. I saw him there.

Q. Was that the day of the execution and delivery to you of the deed involved in this case?

A. Yes, sir.

Q. Just tell us what negotiations you had with Mr. Humphreys on that day and what if any notes and deeds were given to you by him?

A. Mr. Humphreys explained to me that he had considerable resources tied up in the bank; he had deposits, or rather collateral for loans, and he stated that if he could get those released he would have plenty of money. He suggested that if the notes were fixed in such shape as to give him a little time, that he would pay them.

Q. What notes do you speak of?

A. Those particular notes.

Q. Your notes?

A. Yes, sir.

Q. Well, go on?

A. So we talked the matter over at some little length and I suggested this to him, I says, "Mr. Humphreys, you have a house on Cameron Avenue; I want you to sell that house to me." He said, "Well, if I sell that house to you, I would like to have the opportunity of buying it back." Well, we talked and I said to him that I was buying and selling houses; I was perfectly agreeable to sell it back to him, but that I wanted him to fix the matter so that I could have the house, he would sell the house to me, and if at such time as he wanted to redeem that property, then I would be perfectly willing to re-transfer it to him. We then agreed—he executed to me a new series of notes.

Q. How many were there and in what amount?

A. The first—the new notes he gave me were $1000 each, with the one note of $2500, due on November 15th, and the last note I think was due in June subsequently, making the $14,000.

Q. Which was the first to mature?

A. The $2500 one matured first, on November 15th.

Q. They were executed and delivered to you on what date?

A. August 6th.

Q. Now, after the $2500 note, when did the next note mature?

A. December 15th.

Q. In what amount?

A. $1000.

Q. And the next?

A. January 15th, $1000.

Q. And so on?

A. February 1st, I think the next one was.

Q. Was anything said at that time about the amount at which the house was sold to you?

A. Yes.

Q. What was it?

A. The amount agreed upon was $5,500 and it was agreed between s that if Mr. Humphreys took up the first notes, the n te of $2500 and the three $100 notes, that I would re-t ansfer to him his house; but if he did not take up those notes and I had to take them up, then the property belonged to me.

Q. What if anything did you say about your taking up the notes?

A. Why, if I had to take up those notes, then the property belonged to me.

Q. Where was the deed handed to you?

A. When I saw Mr. Humphreys, it was in the morning of August 6th, at his office, and he said that he would draw up the papers, the deed and that he would either have Mrs. Humphreys come to his office or he would send the notary out to his house and would bring the deed to me at my office. In the meantime I was to draw up a new series of notes. I went over to my office and drew up the notes in my office and in the afternoon Mr. Humphreys came to my office and handed me the deed and signed the notes.

Q. The notes were then handed back to you, were they?

A. He just signed them and handed them over; in fact they were several notes I had, blanks that I had written out, under a misapprehension and he called attention that there were some amounts out; in fact I had overlooked this $2500; he called attention to that and we fixed that up and tore up all those additional notes.

Q. When the $2500 note matured on November 15, 1910, did he pay that note?

A. He did not. That note was left in the German Bank for a couple of days for him to pay. He did not pay it.

Q. When did the next note mature?

A. On December 15th.

Q. Did he take up the note, did he pay the note that matured on December 15th?

The Court: Was not this contract between these two touching the conveyance of real estate, was it in writing?

Q. No, it was not.

The Court: Then how is this competent? That question presents itself to me, as to whether or not that agreement must be in writing.

Judge Davis: It was for the transfer of real estate.

The Court: It was not put on record. There was not any transfer. Apparently the deed itself, unrecorded and undelivered as a deed, as yet, the conditional deed was to become a deed at a certain time. It was a conditional deed, not to become effective until this gentleman took up those notes.

Mr. Heintz: Oh no.

The Court: Yes, that the property was to be his if he had to take up those notes.

Mr. Heintz: No, no; I think not, Your Honor.

The Court: Yes, he said that was the agreement.

Mr. Heintz: No, I think not; I do not so understand the testimony.

The Court: His testimony was: "If I took up the notes, then the property was to be mine."

Mr. Heintz: No, no; the testimony was that he was to re-transfer it, at such time—

A. Your Honor, I wouldn't be party to anything that would savor of anything that is a fraud in any way, shape or form; I want to say that.

The Court: That clause of the statute to which I referred, is that any agreement attaching the transfer of real estate must be in writing.

A. Your Honor, that property was mine from the time it was turned over to me—

The Court: You may proceed now, I will hear this further.

Q. (Last question read as follows) "Did he take up the note, did he pay the note that matured on December 15th?"

A. He did not.

Q. When was this deed put on record, Mr. Carey?

A. This deed was put on record November 16th, after the first note fell due and was not paid.

Q. Did you see Mr. Humphreys again after that?

A. Mr. Humphreys came to my office; I think it was sometime—well, I know it was sometime between the date of November 16th and December 1st.

Q. Did he talk with you at that time?

A. He did not. Mr. Humphreys came in the office: it was getting dark and I was very busy at the time and my bookkeeper called me back and he said no he wouldn't come back.

Q. Did he make any demand on you, that time for a reconveyance of that property?

A. No, sir.

Q. Did you ever see him again after that?

A. I saw him but once after that. I was at Tompkin's Drug Store out in Norwood, standing in there and

Mr. Humphreys came in there; I started to go up to see him and he went out and didn't come back. That is the last time I saw the gentleman.

Q. Now, at the time you had this meeting with Mr. Humphreys in August, 1910, did you ask him to make this conveyance to you and did he tell you that he refused to do so, at that time?

A. No, sir.

Q. Did he tell you that his transactions, your transactions with him were entirely gambling transactions based on margin trades in New York Stocks?

A. No, sir.

Q. Did he tell you anything of that kind?

A. No, sir.

Q. Did you know how he was conducting these negotiations or brokerage transactions?

A. He had informed me that he did business through H. M. Beziel & Company, the Flagg Company, the Hudson Company, whom I understood to be reputable brokers.

The Court: The question was, whether you knew?

A. I said that he told me; I wouldn't know, but that he told me.

Q. (Former question read).

A. I can only answer that as to the best knowledge I have, which was his information. I was not at these offices. Yes, I did know that he placed orders through Hudson & Company, because I was in his office there frequently.

Q. Were Hudson & Company members of the New York Stock Exchange?

A. I so understood they were.

Q. Did he tell you that time he was indebted in large sums of money to various people?

A. No, sir.

Q. Did he tell you that he was involved with numerous of those companies and with other people?

A. No, sir; upon the contrary, he told me he had large securities in bank to over balance anything that he owed.

Q. Did he tell you that at the meeting in August?

A. He told me that several times. Yes, he told me that then.

Q. Did he say it was crippling his resources in such a way that he wouldn't be able to help himself?

A. No, sir.

Q. Did he tell you about January 1st, 1910, that he was involved and had no securities, in any way, shape or form?

A. January 1, 1910?

Q. Yes?

A. No, sir; in fact he told me very little of his affairs; I don't think he was a man who told anybody much.

Q. Did you tell him when you went to see him in August, 1910, that if you did not get some sort of a settlement, you would bring a suit of some kind against him in Court for an accounting?

A. No, sir.

Q. Did you know at that time that he claimed his affairs were badly involved?

A. I did not.

Q. Did he say it would be ruinous to allow any litigation to be started against him, and did he so inform you?

A. No, sir.

Q. Did he say it would be ruinous and detrimental to his credit to make any transfer of real estate or any other property that he had, to protect any claim of any creditor, especially your claim?

A. No, sir. As I say, he told me very little of his affairs, if anything; he kept his affairs to himself as far as I know.

Q. Did he tell you as early as the fall of 1910 that he had lost a lot of money through margin transactions, as well as the failure of others, and that he was at least temporarily involved and that it would not be possible for him to pay any large sums of money at that time?

A. No, on the contrary he told me that he had, as I said before, large securities—you ask me if he told me that?

Q. Yes?

A. No.

At this point an adjournment was taken to April 11th, 1912, at ten o'clock in the morning, at which time the hearing was resumed as follows:

Walter J. Carey,

resumed the stand and testified further as follows:

Examined by Mr. Heintz:

Q. I want to ask you another question as to Mr. Humphreys' deposition: Did you say to him that you did not expect to be held liable for any losses in the market upon the stocks he was carrying for you and that you would sue him for an accounting? Did you tell him that at this interview in August?

A. No, sir.

Q. Were you in partnership with him at any time in any transaction?

A. No, sir; none whatever.

Q. Did you share any profits with him?

A. Not on anything.

Q. Or stand any losses with him?

A. No, sir; all of my transactions were individual, on orders to me.

Q. Did you at that time make any threats of suits and public litigation by which you would force him to do something in order to keep you quiet?

A. No, sir.

Q. Mr. Carey, I will ask you whether you have here the notes aggregating $5500, and if so to produce them?

The Court: That is not disputed, is it?

Mr. Durrell: No.

Mr. Heintz: We want to offer those notes in evidence.

Q. I will call your attention to a note dated January 4, payable December 15th, 1910, for $1000 and I will ask you where the custody of that note was in December, 1910?

A. That note was in the German National Bank.

Q. I will ask you whether you received any notice from the bank of the maturity of that note and from whom you received the notice of protest, if you have it here?

A. This note fell due on December 15th, and was the second note of the issue that has been testified to, the $5500. The first note of $2500 was not paid by Mr. Humphreys and I had to take it up myself. On December 14th, I received from Mr. Humphreys this notice of the expiration of the second note; this came in an envelope addressed to me, W. J. Carey, Fosdick Building, Fourth Street, City, and bore the postmark of December 14th, which was in accordance with the understanding that I was to take that note up.

Q. In whose handwriting was this addressed?

A. Mr. Humphreys'.

Q. Do you know his handwriting?

A. Perfectly.

Judge Davis: Oh, we admit that.

Mr. Heintz: We will offer that note in evidence.

Q. Now, passing that, Mr. Carey, I will ask you generally about your conversation with Mr. Humphreys on August 6th, 1910; I will ask you whether or not at that time you knew that he was insolvent?

A. I did not know that he was insolvent; in fact, on the contrary, I felt that he was a man of some means.

Q. Yes?

A. I had every reason to believe so; because in the first place here was a piece of property—

The Court: We do not want any argument.

Q. Did you have any talk with him at that time as to whether or not there was encumbrances of any kind on the property?

A. He told me there was no encumbrance on the Cameron Avenue property, nor was there any encumbrance on his Michigan property.

Q. When did he tell you that?

A. On August 6th.

Q. What, if anything, did he say at that time about going to Michigan?

A. He had several things to clean up, shape up, adjust; he wanted to get away to his usual summer vacation.

Q. What did he say about that?

A. He said he usually left about July 4th, which I knew to be a fact, but this year on account of certain matters which came up that required his attention, he was late getting away; he was very anxious to complete his business and go to his family.

Q. Did he eventually go?

A. He did.

Q. Did you have any talk with him about any bank account?

A. He told me at different times, prior to August 6th, that he had accounts with the Fourth National, The Second National and also with a Morrow, Ohio, bank; of course I don't know that it was true; I never saw the accounts.

The Court: Have you ever made any attempt to find out?

A. No, sir.

Q. Mr. Carey, did you ever know prior to the time that this suit was filed, that Mr. Humphreys had forged the name of Edward Showhan or any other person to any mortgage and notes?

A. The first information I got about any of that was in the daily papers; that was after January, 1911.

Q. Did you know that he had embezzled any money from the Isabella Brown estate?

A. No, sir; I was absolutely stunned to find out that such was the case.

Q. Did you know that he owed any sums of money to Kate Curtis, or any of these people who took up that paper?

A. No, sir; I never heard of it until after it came out in the press.

Q. Did you know that he owed Judge Davis any money?

A. I knew that Judge Davis did business with him.

The Court: The question was whether you knew he owed Judge Davis any money?

A. No, sir; I did not.

Q. Did you know that he had obtained any money from the Groves estate?

A. No, sir; I never heard of the Groves Estate.

Q. Did you know of any moneys that he owed prior to the time of the bringing of this action?

A. Any money that he owed?

Q. Yes, other than yours?

A. Why, I knew that he owed a gentleman out in Norwood $500 and that was somewhere in October, and the gentleman told me that he had paid it.

Q. You learned that had been paid?

A. Yes, sir.

Q. Was any intention in your mind at the time you secured this deed, of obtaining a preference, or a hindering and delaying or defeating the creditors of John E, Humphreys?

A. No, sir; I didn't know he had any.

Judge Davis: It makes no difference under the amended act whether he did or not.

The Court: Kindly produce the latest act on the subject and let me have it.

Judge Davis: We will hand that up to Your Honor.

Q. (Handing paper to witness): Is that the deed in question, Mr. Carey?

A. Yes, that is the deed in question.

The Court: There is no doubt about the deed, or any dispute, is there?

Judge Davis: Oh no.

Mr. Heintz: We will offer that deed in evidence.

Cross-Examination.

By Judge Davis:

Mr. Heintz: You represent the trustee?

Judge Davis: Mr. Durrell has delegated me to cross-examine.

Mr. Heintz: Because I would object except upon the issue raised by Harriet A. Humphreys.

The Court: Well, I will permit it. Go ahead.

Q. Mr. Carey, I don't know whether I understood you or not that you had a settlement with Mr. Humphreys about notes? Was that in 1909 or early in 1910, the first batch of notes?

A. That was 1910, in January.

Q. January, 1910?

A. Yes.

Q. That is the first batch of notes he gave you?

A. Oh no.

Q. Very well. Now then, how much, or how many notes did he give you, or what amount in January, on January 4, 1910?

A. He gave me notes aggregating something like $14,000, is my recollection.

Q. Wasn't it something over $18,000?

A. No, I don't think so.

Q. Did not Mr. Humphreys owe you in January, 1910 $18,446.51, on January 1st, three days before the 4th of January?

A. I don't know anything about January 1st; January 4th was our settlement.

Q. How much did he owe you according to your books?

A. According to my book, $14,053.91 and he gave a settlement of $14,000.

Q. Did he pay you any money about that date?

A. He owed me really $15,591.91; on January 10th he paid $1,500, which reduced the balance to $14,053.91.

Q. Lets call it $14,000?

A. $14,000.

Q. Some of these notes you have here, one for $1,000, or rather three for $1,000, and one of $2,500, are some of those notes?

A. No, sir.

Q. These are dated January 4, 1910?

A. Yes, that is the time the account was settled.

Q. Are not these some of those original notes?

A. My testimony goes to show, and it is a fact, that on August 6th, there was a new deal.

Q. Why is this dated January 4th, 1910, then?

A. The account stopped January 4, 1910, at which time we had our settlement and I was given notes.

By the Court:

Q. And there was no dealing between you at that time in August when the deed was made?

A. I say, no dealings—I mean as far as purchases were concerned.

Q. He did not act as broker for you any longer, after June, 1910?

A. No, sir.

Q. Your dealings were ended then?

A. Yes, sir.

Q. And a settlement was made?

A. Yes, sir.

Q. Without any further dealings, you made a new settlement?

A. In August, yes. There were certain of the notes that had gone by, then came this new deal.

Q. In other words, he had not paid you the notes he gave you on January 4th?

A. No, sir.

Q. And on August 6th, a new note, dated from January 4th—the new notes were dated then?

A. Yes, sir.

By Judge Davis:

Q. Why did you date the notes in August back to January 4th?

A. The reason was that the first settlement was made at that time and no interest had been paid.

Q. The new deal in August and the new notes covered old debts, or were for notes given on January 4th, of the same year?

A. Yes, sir.

Q. Now then, what were the amounts of the notes you got in August?

A. $14,000. $5,500 was the understood agreement as to the value of the house and he gave me notes to the extent of $14,000, agreeing to take up the note due on November 15th and the three succeeding notes, whereupon I agreed to retransfer to him the house.

Q. You got from him then in August notes for $14,000?

A. Yes, sir.

Q. Where are those notes now?

A. They are here.

Q. The whole $14,000?

A. Yes, sir.

Q. I would like to have them?

A. (Witness hands counsel papers.)

The Court: How many of the notes given January 4, 1910, had become due prior to August 6, 1910?

A. I think he paid $2,500 which was a note that ran out on November 15, which was not disbursed, but was continued under the old arrangement; that is to say; he did not give me a new note for that, but it was included in the $14,000.

By the Court:

Q. Then there were $11,500 of new notes given on August 6th?

A. Yes.

Q. And the old note of $2,500 which was not yet due?

A. Was in bank, and he agreed to take that up as part consideration of the re-transfer of his property to him.

Q. Have you those old notes?

A. I do not think so; they were destroyed.

Q. Did they come due from time to time?

A. Yes.

Q. What were their dates of maturity, approximately?

A. Well, they came due may be thirty days apart, or say fifteen days apart, at different times.

Q. When the first one came due, what did you do, did you put it in bank?

A. Not all at once, not all of them.

Q. At one time or another, did you put them in bank?

A. Yes, I would say that all of the notes were in bank at different times.

Q. The first one came due in about thirty days?

A. Approximately around in there.

Q. Then what happened?

A. Why, he didn't pay it.

Q. Then what did you do?

A. Why, he gave me a new note in place of it; he gave me some notes at that time.

Q. Have you memorandum of these notes?

A. I have a memorandum, because a great many of these transactions occurred over in his office; I have only a memorandum of the notes he gave over in my office, as he would happen to come over there.

Q. Did he sometimes come to your office?

A. Yes, sir.

Q. Why did he come?

A. This settlement of August 6th, was at my office.

Q. Did you send for him?

A. Well, I saw him as I testified, on the morning of August 6th, when the matter of the house was talked over, and a new settlement, and then he promised to come over to my office.

Q. Before then, have you any other recollection of times when he came to your office?

A. Yes, sir.

Q. How often was that between January 4th and August 6th?

A. Well now, I might be able to tell you that (consulting memorandum); he seems to have given me a thirty day note on May 20th.

Q. I am not asking you about that; I am asking you how many times he came to your office, according to your memorandum—only of times he came to your office?

A. That is, between January 4th, 1910 and August 6th, 1910.

Q. Yes?

A. It shows about six times.

Q. What were the dates of those times?

A. Well, there seems to be a note here May 20th, for thirty days.

Q. One was January 4th, the next was May 20th?

A. The first one after January 4th was May 20th.

Q. When was the next one?

A. There is one here June 20th for thirty days. May 20th for twenty days expiring June 30th, so that was a renewal of a note.

Q. I am asking you now the dates of the times he came to your office?

A. Yes, sir.

Q. You said about six times. Now, you have given us January 4th, May 20th, June 20th?

A. Then he came on July 20th; that is all.

Q. Then he came on August 6th?

A. Yes, sir.

Q. What was the occasion of his coming to your office?

A. Well, the occasion of his coming to my office was to renew this paper.

Q. Did you send for him to come?

A. I probably did.

Q. Did you or not?

A. Well, I can't say positively that I did; he evidently—

Q. What did he do and what did you do?

A. Well, he came over to my office, whether at my request or not, I don't remember.

Q. When did you go to his office?

A. I can't say; if a note fell due, I went to his office and wanted to know about it.

Q. What did he say?

A. On one occasion he said it was an oversight; he said at another time he was not just in shape to handle it satisfactorily and asked for a little more time on it, which I willingly granted.

Q. How many notes came due between January 4th and August 6th? There was one of $2,500 not due until November; into how many notes was the $11,500 divided?

A. I believe there was one other note of $2,500 which ran out in September?

Q. There was another one then, besides the November one?

A. Yes, but that was taken up and included in the settlement of August 6th; that was handed back and was torn up.

Q. How many notes came due?

A. About $9,000, as I remember, came due and had been renewed.

Q. How many notes?

A. Well, I can't tell you that.

Q. In what amounts were these notes?

A. $2,500, $2,000, $1,000.

Q. We are not speaking of the one that came due in November, that left $9,500?

A. Here is one of $2,000 that ran out on July 20th; another one of $1,000 that ran out on May 20; my recollection is that the $2,000 on July 20th was a renewal of two $1,000 notes.

Q. Which had become due prior to this time?

A. Yes, either prior or about that time.

Q. The question still is, Mr. Carey, how many notes did he give you between January 4th and August 6th?

A. He gave notes aggregating $14,000; I can not tell you the exact number of notes, because they were renewed from time to time—I can't tell you.

Q. Were there as many as five?

A. I should judge there would be more than that.

Q. I am asking you the fact?

A. My recollection is that the bulk of them would be $1,000 and $1,500 notes.

Q. So that there were, taking these $2,500 out, there were some eight or nine notes?

A. $9,500.

Q. Well, there were eight or nine notes?

A. The aggregate account was $14,000; two $2,500 notes make $5,000, leaving $9,000.

Q. But I am asking you how many notes, were there seven or eight?

A. Well, there would probably be about six.

Q. I ask you, how many there were?

A. I can't say; I don't remember.

Q. But there were six or eight, were there?

A. Yes, I should say so.

Q. What do you say your business is, Mr. Carey?

A. Real estate and insurance.

Q. What is the volume of your business every year?

A. Well, it varies.

Q. Well what is it, well what is the average?

A. One year it will aggregate one amount and another year a different amount.

By Judge Davis:

Q. About the amount, I was going to ask the same question; it is very large, is it not?

A. Yes, it is large.

Q. Do you deal in promissory notes?

A. Promissory notes, no sir.

By the Court:

Q. Do you receive promissory notes?

A. In real estate transactions, we receive mortgage notes.

Q. But not personal notes of hand?

A. No, sir.

Q. So that the receipt of these notes was something unusual from your general transactions?

A. I don't understand.

Q. Was it or was it not unusual?

A. This is not a firm transaction, it is a personal matter.

Q. Well, in your personal affairs outside of your partnership or firm affairs or your general business, do you receive a great many promissory notes?

A. No, sir.

Q. So then this was an unusual transaction for you to take in six or eight promissory notes of $1,000 each?

A. Yes, sir.

Q. It was unusual?

A. Yes, somewhat unusual.

Q. Don't you think it is peculiar, that you do not remember the number of $1,000 notes executed, when it was an unusual transaction?

A. Not necessarily; I might remember the aggregate amount, I mean, but how those notes were divided up, I can not state definitely; because as a matter of general business we handled a great deal of money, we handled a great deal of security and things of that sort.

Q. But not notes of hand?

A. I have a great many things on my mind that would take out certain specific things; this was an outside transaction.

Q. Had you large investments on your personal account?

A. Not on personal accounts.

Q. Had you had at that time?

A. Well sir—

Q. Or at any of those times?

A. Yes.

Q. At that time?

A. Yes.

Q. You are a man of large means?

A. Not particularly.

Q. Well in general terms what would you understand by a man of large means?

A. A man of large means might be worth $100,000 or over.

Q. Would you come within that class?

A. No, sir. Some people, however, might consider $30,000 or $20,000 that.

Q. What do you consider as applicable to yourself?

A. Well, I would consider a man of large means—I don't see that—

Judge Davis: We were going to ask that, what he is worth?

Mr. Oppenheimer: We object to that.

A. I want to be frank with Your Honor—

Q. What is your answer to the question as to your opinion as to what large means meant, as applicable to yourself and this situation? You say you were not a man of large means at that time?

A. I will say my opinion of a man of large means would be a man worth $100,000 or over.

Q. As applicable to you?

A. I am not a man of large means.

Q. I want to get at what your business transactions were at that time, and how important, and of how much importance you regard notes of $1,000 each, coming due from month to month, within six or eight months?

A. Well, I will say this: I handle an insurance business—

Q. No, I am not asking you about your insurance business—on your personal account—you have distinguished your personal affairs from your firm affairs?

A. Yes, sir.

Q. Now, individually, personally, you have said that you were not receiving notes of hand during that time, except these I understood you to say; now, what I am trying to get at is how it is possible for a man who deals in such an unusual transaction, as you say this was, not to be able to remember the number, the denomination of such an important transaction as several $1,000 notes?

A. Well, the transactions of these notes extended from time to time and were changed so that I can not remember what the specific amounts of these particular notes on January 4th, were; but I do know what the aggregate amount was; it is confused in my mind as to just what the amounts were.

Q. How many renewals took place in that six months?

A. The only data that I have is my own notebook where he made out some certain renewals.

Q. How many renewals can you at this time testify to?

A. May 20th, which was a $1,000 renewal for thirty days; that is one; that fell due June 30th. On June 20th, there was a note renewed for $2,000 for thirty days; that is two. Now, my recollection is that that note included this note that fell due on June 20th, the first note, plus another note which probably fell due at the same time;

that is a $2,000 note to take the place of the one I have just spoken of and another note probably dated previous. Now, on July 20th, there was a note of $1,000 in renewal and on the same date another $1,000 in renewal, the first of which is evidently a renewal of the $2,000 note falling due on that date; one of them was made to fall due August 20th, and the other September 10th; those are renewals. Now, there are notes falling due August 20th and on September 10th, and those were taken up and destroyed when this new deal occurred.

Q. How much cash did he pay you between January 4th and August 6th?

A. He didn't pay it to me; he paid the $1,500 which fell due in January, which had been given to me previously.

Q. One that was due from the $15,000, that left $14,000?

A. Yes.

Q. How much cash did he pay you on the $14,000 between January 4th, and August 6th?

A. He did not pay me any cash, as I recollect.

Q. Well, did he pay you on your notes?

A. He may have taken up some previous notes.

Q. I am asking you about the $14,000 of notes?

A. Not a cent.

Q. He paid you nothing?

A. Not a cent.

Q. Had all those notes been in bank?

A. To the best of my recollection, yes.

Q. Who paid the discount on them?

A. Why, the discount has not been paid—that is, you mean the notes?

Q. Yes?

A. The interest has not been paid; I paid the discount on them, any discount there was.

Q. You never asked Mr. Humphreys to pay that back again to you, did you?

A. No, sir.

Q. These notes of August 6th, were for $14,000 also?

A. Yes, and interest.

Q. Did they include interest on the matured notes during the previous six months?

A. Here are five of them (handing papers to counsel) it says $1,000 due February 1, 1911, at six percent. interest.

Q. So there was no interest paid?

A. No.

By Judge Davis:

Q. Mr. Carey, if I understand you this same $14,000 was still due you with no interest paid on January 4th, up until August 6th?

A. Yes, sir.

Q. Did he give you new notes on August 6th?

A. Yes, sir.

Q. Where are those new notes?

A. Here are part of them.

Q. Where are the balance of them? I want all of them?

A. (Witness hands papers to counsel.)

Q. Here we have one note January 4th, $1,000, then $1,000 and then $1,000; that makes three. Another $1,000 is four, another makes five, another makes six, another makes seven, another makes eight; $500 more makes $8,500, all dated January 4, 1910, and you have there how much?

A. $5,500.

Q. And one was for $2,500?

A. And the rest for $1,000.

The Court: You say there was one of $2,500 and three of $1,000, which you say was the consideration of this transfer?

A. Yes.

The Court: Now, are the three of $1,000 each just like the eight of $1,000 each?

A. Yes, all the same.

The Court: Just alike?

A. Yes.

Q. You have here $14,000 in notes given to you on August 6th?

A. Yes.

Q. Mr. Humphreys gave you a deed August 6th for the property?

A. Yes.

Q. Your testimony is that he deeded that absolutely to you and it was your property?

A. Yes.

The Court: At that time?

A. Yes, sir.

Q. Then why did you not turn back to him $5,500 of those notes right then and there?

A. For this reason—

Q. If it was a purchase, shouldn't you have done that?

A. Mr. Humphreys—

Q. Just answer my question—if it was a purchase, shouldn't you have turned him back $5,500?

A. Mr. Humphreys in transferring that property to me, had made the request to me that I re-sell him the

property; I told him that I would, with the provision, at his own suggestion, that he take up these notes as they accrued.

By the Court:

Q. Those notes were in your possession?

A. Well, of course they were in my possession until they were put in bank.

Q. On that day they were in your possession?

A. On August 6th, yes. The reason I did not hand the deed back to him, was because he did give me the consideration; the reason I did not record the deed was because I felt that if he did re-purchase the property, that I could let him take the deed without any record at all.

Q. If you will think a minute before answering the questions— the question was, why, if this $5,500 of notes was a consideration for that deed, why you did not turn the notes over to Mr. Humphreys, instead of keeping both deed and notes yourself?

A. Because Mr. Humphreys was to take those notes up in order to re-purchase the house—you say, why didn't I do it?

Q. Yes?

A. Now, Mr. Humphreys explained it to me that he had certain securities over and above anything that he might owe in the various banks, and he wanted time to get those securities so that he could re-purchase the property. Now, I took those notes in order to give him a chance to do what he wanted to.

Q. I don't understand that?

A. Why, Mr. Humphreys gave me $14,000 worth of notes on that day and it was the understanding between Mr. Humphreys and me that the first note of $2,500 and the three $1,000 notes would act as a re-purchase of the property. Those notes came due in November, December, January and February and he agreed to take those notes up and in consideration of him taking those notes up, I agreed to re-transfer to him this property. That was why I took the notes.

Q. I want to be sure that I understand you; here were $14,000 worth of notes?

A. Yes, sir.

Q. That is what he owed you?

A. Yes, sir.

Q. On August 6th, he paid off $5,500 of those notes by giving you this deed?

A. Yes, sir.

Q. But he did not take the notes and destroy them?

A. No, sir.

Q. They were used in the payment of that property and the reason you did that, you say, was because he was to have the opportunity of re-purchasing?

A. That is the idea.

Q. He was to have the opportunity of re-purchasing the property by taking up the notes which you proposed to discount?

A. That is it exactly; in other words it would give him time to adjust his affairs into shape, and he could take them up, as he explained to me, easily. That is the reason exactly.

By Judge Davis:

Q. Do you recall when the first note matured of the $14,000 you took on August 6th?

A. The first note of the batch I took up that he gave me on August 6th, matured November 15, 1910.

Q. Look at that note I hand you and let me ask you if that is not December?

A. That is not the first note.

Q. Where is the first one?

A. The $2,500 note, November 15, 1910.

Q. Then what is the one that matured next after that?

A. December 15, 1910; that is the one he sent the notice for.

Q. Now, if you purchased this property from him on August 6th, 1910, as you say, absolutely, why was the necessity of taking notes maturing in the future and you keeping them in your possession?

Mr. Oppenheimer: I think that has just been answered.

The Court: Yes, he answered that. The first note came due in November.

A. Yes, sir.

Q. What became of it?

A. I took it up.

The Court: You paid it then?

A. Yes, sir.

By the Court:

Q. At that time then, he owed you $16,500?

A. Well, I didn't consider he owed me $16,500, no; because immediately after taking this note up I put that deed on file; that canceled that part of the account; I understood him that he had determined not to re-purchase and I put my deed on file, and the fact of receiving this notice on December 14th, indicated to me that he had fully abandoned the idea of re-purchasing the property, because he sent that note to me to take up, that other note.

Q. December 15th was a month after you put the deed on record?

A. Yes, but that was just prior to the other note coming due.

Q. If he had carried out the transaction, the indebtedness would have been reduced from $14,000—

A. To $8,500, yes.

Q. Having failed as he did, he did not take up the first note?

A. He did not take up any note.

Q. So that the indebtedness then was increased by $2,500?

A. Well, I considered that property I got in exchange was for value received, I so took it.

Q. But you paid $2,500 more?

A. Well, what if I did? It didn't increase the indebtedness.

By Judge Davis:

Q. Now Mr. Carey, you put the deed on record November 16, 1910?

A. Yes.

Q. Why did you not mail back to Mr. Humphreys $5,500 of those notes?

A. Why didn't I?

Q. Yes?

A. I don't know.

Q. Didn't that occur to you?

A. Well, I don't know—no, it didn't as a matter of fact.

Q. It didn't occur to you?

A. No.

Q. Are you sure of that now, Mr. Carey, that it did not occur to you?

A. Am I sure of what? Why do you question my veracity, I said I was sure of it?

Q. What bank was that first note in?

A. The German National.

Q. Was not Mr. Humphreys entitled to $5,500 of his notes, after you had recorded the deed?

A. All of these notes—they were not in my possession; the rest of the notes were in the bank; I had to pay them.

Q. You didn't discount them?

A. Do you know that to be a fact?

Q. Will you just answer my question?

A. The fact of the $2,500 note was, that it was in for collection.

The Court: How about the others?

A. The $1,000 note was in for collection. The $2,000 specifically was not in for collection. They were in the Norwood National Bank as collateral and I had to pay

them, I gave my check for $1,000, for the two $1,000; they were the two last notes.

Q. Here is a note that matured December 15th?

A. That was not it—January and February.

Q. Will you look at this note and see if that is not marked as discounted on the face of it?

A. It doesn't make any difference now whether it is marked that way or not, it is just the same as I am telling you. I will show you my check where I paid that.

Q. Isn't it true that when the bank takes a note and discounts it, it marks it right off on the face of the note?

A. Sometimes they do.

Q. Don't you know that they do that in every instance?

A. I don't know; I will say I can show you my check for $1,000 for each one of those notes; I paid interest.

Q. You have done a large banking business, and you had for the last twenty-five years?

A. Yes, sir.

Q. You are at the head of a large insurance firm?

A. Well, yes.

Q. You are head man in the firm?

A. I am half of it.

Q. Well, you are the head of the firm?

A. I own a half interest in the firm.

Q. And in addition to that, you do a large real estate business?

A. Well, we do quite a good real estate business.

Q. And building?

A. Yes, sir.

Q. You have been very active?

A. Yes.

Q. You have discounted many notes in banks?

A. Yes, sir.

Q. I will ask you if in every instance where you have discounted a note, if it has not been marked off on the face of the note, the rate of discount?

A. I can't answer that; I can not recollect every instance.

By the Court:

Q. After this transaction, when you had taken up those notes, those $5,500 of notes, he still owed you $14,000?

A. I do not so regard it.

Q. But they were, as a matter of fact, these notes of $5,500 really were paid?

A. Yes, sir.

Q. If the transaction had been closed on August 6th?

A. I considered that Mr. Humphreys only owed me $8,500 after that.

Q. If the transaction had been closed that day, then he would have paid you, you would have paid him rather, $5,500, for that property?

A. Yes, sir.

Q. And would have destroyed his notes for $5,500?

A. Yes, sir.

Q. Which would have left him owing you $8,500?

A. I did not destroy the notes.

Q. But you kept the notes and used them and had to pay them?

A. Yes, sir.

Q. Well then, didn't he owe you? Those were his notes you had to take up, didn't he owe you $14,000 when the transaction was closed?

A. I don't want to say something that is not so; as I have said; I did not so consider that he owed me $14,000; he owed me $8,500 after I had taken the house; in other words the $5,500 transaction stood alone..

Q. How would it have been if he had paid those notes?

A. I would have re-transferred his property to him; that was my agreement with him.

By Judge Davis:

Q. It was the agreement, was it not, that you were never to record that deed?

A. No, sir; the only reason I did not record that deed was the personal request of Mr. Humphreys that in case he re-purchased the property, it would not be necessary.

Q. Did he not tell you at the time, that he was in bad shape financially?

A. No, sir; he told me he had a lot of business affairs that required the putting up of large collateral; he explained to me that he had to put up collateral far in excess of any loan he made, to the bank. That seemed to be a reason to me. He said, "Now, I will sell you this house," and he said, "I want the privilege to re-purchase it. There is no necessity for it to go on record." As I said, I had confidence in the man and I didn't put it on record until the thing happened that convinced me that he had abandoned the idea of re-purchasing the house, and then for my own protection I recorded the deed.

Q. What convinced you was, that you could not get your money and that is how you came to put the deed on record?

A. What convinced me was the fact that he did not take up the note that he had agreed to take up.

Q. The note did not mature until after you put the deed on record.

A. Is that so?

Q. November 15th, the first note was?

A. I think I put that on record November 16th.

Q. Did you go to his office and ask him why he had not paid that note, before you put the deed on record?

A. No, sir.

Q. Why didn't you do that?

A. Because—

Q. I asked you why?

A. I didn't think it was necessary.

Q. You knew all summer that Mr. Humphreys was in hard lines?

A. No, sir.

Q. Didn't you have a lot of these notes in the Norwood National Bank and there you were pestering the life out of Mr. Humphreys trying to get him to pay them, and having the cashier out there after Mr. Humphreys about it?

A. I undoubtedly asked my bankers to send him notices; I wanted the notes paid.

Q. But you were after him vigorously for the payment of the $14,000 all through the summer?

A. Undoubtedly I wanted my money.

Q. You said Mr. Humphreys owed you $14,000?

A. Yes, sir.

Q. Wasn't that a large amount for you to carry against him without security?

A. It would seem so.

Q. It was probably one-third of the total value of your wealth?

A. That is an assumption.

The Court: Was it or not? We want to get at the facts here and see why it is that this most extraordinary transaction took place.

A. I can explain this most extraordinary transaction.

The Court: You will have to.

A. Well, I looked upon Mr. John Humphreys as I would upon a brother; I trusted him as closely as I would have my own brother and I wouldn't go out of my way to do Mr. Humphreys one bit of harm in any way, shape or form. I treated him and trusted him like a brother. That is my reason. I want to say that if I have done anything here that was not in accordance with strict legal or strict business conditions, that it was on account of my utter confidence in John Humphreys, in whom I had entire confidence until the time he left the city. Then I was told for the first time that he had taken his wife and gone, but I hadn't a suspicion myself, when I called up the office to find out where he was.

Mr. Oppenheimer: We object to this; it is certainly going into a personal matter.

The Court overruled the objection, to which ruling of the Court counsel for the defendant at the time excepted.

A. Your Honor will understand that the transactions between Mr. Humphreys and myself were not ordinary business transactions. Mr. Humphreys and I had been close personal friends for years and I had understood that I had made some money on these transactions, in the stock transactions. I was not worried about that particularly, for Mr. Humphreys had said to me that he had securities up, and things of that sort that positively would put him on easy street; he explained that to me and I wouldn't be the one to push John Humphreys.

The Court: No, and your motives and your good faith are not attacked.

A. I felt toward him as I say I would toward my own brother.

By the Court:

Q. The question is whether Mr. Humphreys was insolvent?

A. I do not know.

Q. And if you knew it, or had reasonable ground to know it?

A. Absolutely I knew nothing.

Q. How could it be that you had a series of notes coming due every thirty days, you had not got any interest on them, you discounted some of them, had to pay the interest yourself, had to renew them during a period of six months, one or two of them a couple of times perhaps—

A. Yes, sir.

Q. And yet you never asked Mr. Humphreys to make good at any time, in any way?

A. I do not say that.

Q. Well, did you ask him at any time?

A. Several times, in fact whenever a note fell due I asked him to pay the note.

Q. What did he say?

A. Well, some days he wouldn't say anything, just let the note go by; then I would have to go see him and he would explain to me that he had all this collateral up.

Q. That he did not have the money?

A. He did not say he didn't have the money, but that it was tied up in different transactions he had with banks. In other words I was relying upon his securities being away above what he owed.

Q. You had a settlement with him in January?

A. Yes and the next was August 6th.

Q. Now, between those times, these notes were coming due from time to time and he had not paid you a cent?

A. Yes, sir.

Q. He had not even paid you the interest?

A. Yes, sir.

Q. You had to pay the discount?

A. I paid the interest.

Q. Now, why is it that if all that time no money was paid to you, if he were a man of such good financial position, and had so many securities that he gave to the various banks and borrowed money largely upon them, why is it that in all that time you did not get paid something, or did not get security until August 6th, when these papers were turned over to you? How do you explain that?

A. I guess the only thing that I can explain about that is, that I was easy; that is the only explanation I can give.

Q. The question is, what the ordinary explanation would be, looking at it either from a friendly or business standpoint?

A. I say from a business standpoint, it looks bad.

Q. Yes?

A. But from a friendly standpoint, it does not.

Q. But still, one may suspect his friend after a while of not being able to pay?

A. Yes, sir.

By Judge Davis:

Q. You said you were a great friend of Mr. Humphreys?

A. I always was a great friend of Mr. Humphreys.

Q. You asked for this deed in August—I mean this debt of yours?

A. I asked for it; I thought it was due me.

Q. Did you ask him to buy his property?

A. I told him that I would buy his property at $5,500.

Q. Did you say to him that "We will apply that on the note?"

A. I told you what my agreement with him was.

Q. Well, I am asking you?

A. I want to explain that.

Q. I am asking you the question now? You say that you said to Mr. Humphreys, "I will apply that $5500 as a credit upon that note?" Or was that talked of?

Mr. Oppenheimer: That has all been gone over frequently.

Q. I just want to ask you a few more questions: You said you knew about Mr. Humphreys' property, that there was this real estate in Norwood that you bought for $5500 and then that he had another piece in Michigan, a summer home in Michigan?

A. Yes.

Q. Had you seen that summer home?

A. Yes.

Q. You are a real estate man?

A. Yes.

Q. Can you give the approximate valuation upon that Michigan property?

A. I can give my opinion of it.

Q. That is what I am asking you?

A. Of course I am more familiar with property here.

Q. I understand that?

A. I would know in a general way, my opinion was that it was worth somewhere in the neighborhood of $2000.

Q. Don't you know that that property was transferred by Mr. Humphreys for $2300?

A. No, I don't know that.

Q. You have been informed of that fact, have you not?

A. I have later ascertained that; that is to say it has come to my knowledge.

Q. Also it was transferred by Mr. Humphreys to Mr. Howard Justus in or about July preceding the transfer to you?

A. Are you fixing the time when I knew that? I know it now, I have heard that was the case; I didn't know it then.

Q. That is all of the real estate he had?

A. I don't know.

Q. Well, as far as you knew?

A. Well, I say I don't know. I knew he had those pieces; I saw them; Mr. Humphreys dealt in real estate, has sold us real estate and I have sold him real estate.

Q. He did not sell you any real estate within two years of the execution of these deeds, did he?

A. I don't think so.

Q. It was really about four years?

A. It was sometime ago.

Q. His sales were in the early times, when he was in a prosperous condition?

A. I said it was sometime ago when he sold to us; I didn't know his condition, I always supposed he was in prosperous condition.

Q. Do you know what chattel property he had during the month of August?

A. Chattel property?

Q. Yes, stocks, bonds, notes or anything?

A. No.

Q. Mr. Carey, you got a deed for this property and placed it upon record. You said you were a friend of Mr. Humphreys'; if you were, why didn't you tell him on

November 16th, that you were going to put the deed on record?

A. Well, I didn't think it was necessary to tell him. There was no agreement not to put it on record; I had to take care of that note; it was notification enough to me that he had abandoned his intention of redeeming it.

Q. Didn't he come into your office next day, or the date after, when he saw the transfer in the paper?

A. He came sometime between the time the deed was filed for record and the first of December.

Q. Wasn't it the very next day after the transfer, when he saw it in the paper?

A. It may have been.

Q. And didn't he then raise a row with you and say you had broken faith with him?

A. Absolutely he did not.

Q. What did he come to see you about?

A. I want to repeat just what I said before—just what I said then. Mr. Humphreys came into my office in the evening it was toward dark; he stated to my bookkeeper that he wanted to see me. I was there, I was very busy talking to another gentleman. Mr. Heintz came into our office shortly after and walked through and went over to the other desk—

The Court: What has that got to do with this case?

A. I am trying to tell you. Upon Mr. Heintz's entering and going up to Mr. Zeigler's desk Mr. Humphreys got up and left the office, he didn't stay even to say how do you do to me; my bookkeeper went out after Mr. Humphreys and told him that—

The Court: You don't know what he told him.

A. No, but she went out. That is the last I saw of Mr. Humphreys that day and I never passed one word with him.

Q. So Mr. Humphreys then said nothing to you about deeding the property back to him?

A. Nothing whatever; he did not speak to me; he did not even say how do you do to me.

Q. You knew at that time and you didn't want to speak to him, wasn't that the truth?

A. I never refused to speak to him at any time.

Q. You knew you had violated that agreement with him and you didn't feel like speaking to him, did you?

A. No, sir; that is not it; I was always ready to speak to him.

Q. If you were such good friends, why didn't you as a good friend tell him you were going to put the deed on record?

Above question is objected to as repetition. The Court ruled the witness may answer.

Q. It was not necessary to tell him; that was a matter of agreement.

By the Court:

Q. Was Mr. Heintz your attorney at the time?

A. Yes, Mr. Heintz has acted as attorney for us on numerous occasions. He was connected in other enterprises with me.

Q. Was he your attorney at that time?

A. We had him for certain things; he was not our exclusive attorney.

Q. Did he advise you to put the deed on record?

A. No, sir; I advised myself to put it on record and I sent the deed up to him to put on record.

Q. Had you ever talked to him about it before that time?

A. No, I don't think I had. Mr. Heintz was not there on that business; he came in to see Mr. Ziegler; I simply cite that as evidence in my mind of the fact th Mr. Humphreys came in for some reason or other and I was busy with another gentleman and couldn't talk to Mr. Humphreys right then and he got up and left.

By Judge Davis:

Q. Now, you sold this property?

A. Yes, sir.

Q. Before you sold this property you tried to make a loan upon it on three or four different occasions?

A. Two or three; I tried to get a loan in the Union Savings Bank & Trust Company.

Q. Yes?

A. Also through Mr. Oppenheimer.

The Court: When was that?

A. It was in December.

The Court: Fix the time, if you can?

Q. I will get at it in a minute. When you made the application to the Union Savings Bank & Trust Company for a loan upon this property, did not Mr. Humphreys immediately find out that fact and write to the Union Savings Bank a letter notifying them that the property was not yours?

A. Subsequent facts developed that he did; I didn't know that at the time; I didn't know that until after the first of January.

Q. And the Union Savings Bank turned the loan down?

A. Yes, and they wouldn't give him a reason for it at all?

Q. Didn't you learn afterwards that it was on account of that letter?

A. After the first of January I did learn that, and the President of the Union Savings Bank, Mr. Wright, called me up and apologized for not letting me know the reason and said he was sorry.

Q. But he finally did give you the reason, did he?

A. Why, he didn't give me a reason; I ascertained afterward in the daily press, but he apologized for not letting me know so that I could protect myself in the matter; I was indignant that he had not let me know.

Q. Was that your first attempt to make a loan upon it?

A. I don't know whether it was the first; it was one of the two or three. As I say, I went to Mr. Oppenheimer for a loan.

Q. That was the last one?

A. Possibly.

Q. The last application that you made. Do you recollect to whom the other applications were made?

A. My recollection is that there was but one other and that was a man named Love, William J. Love, is my recollection. I say that our firm had made loans through those same individuals at other times; Mr. Love we have a loan with right now, also through Mr. Oppenheimer.

Q. At the time you went and tried to make the loan through Mr. Oppenheimer, that was the last of December, 1910?

A. I don't recall just when that was; it was sometime along that period; it might have been on the 15th.

Q. About two weeks after Mr. Humphreys had gone away?

A. I didn't know that Mr. Humphreys had gone away?

Q. You didn't know it?

A. Oh, no; I didn't know Mr. Humphreys had gone away until about the first of January.

Q. Now then, the time that you were applying for the loan from Mr. Oppenheimer, that was turned down too, wasn't it?

A. Why, I don't know that it was turned down; my recollection is that after I ascertained that Mr. Humphreys had gone away and that there might be some complications arising about this matter, I went to Mr. Oppenheimer and my recollection is that I told Mr. Oppenheimer that under the circumstances I would withdraw the loan, withdraw the request for the loan.

Q. Didn't Mr. Oppenheimer tell you that he had been notified that bankruptcy proceedings were to be instituted in a day or two and that he couldn't recommend the loan?

A. I don't think he did. I am not positive on that.

Q. Don't you know that he did? That Mr. Oppenheimer told you that he talked with me and that in all probability bankruptcy proceedings would be brought against Mr. Humphreys and that it would not be safe to make the loan?

A. My recollection is that the first I said to Mr. Oppenheimer was of my own volition, on account of the fact that some complications might arise and I didn't want to involve him.

Q. Then you were suspicious in thinking bankruptcy proceedings would take place and take the property from you?

A. I didn't know what would occur.

Q But you were looking for it?

A. I presumed there would be some adjustment.

Q. That was the very day that you made the transfer to the Canty people?

A. No, sir.

Q. Not more than twenty-four hours before?

A. I said, no, sir; that was afterward.

Q. Wasn't that the very day that you went to Mr. Oppenheimer's office and that it was late that evening that you made the transfer to the Canty girls?

A. The day I went to Mr. Oppenheimer, in my mind, was after the matter of the transfer.

Q. After the transfer?

A. After the transfer, yes.

The Court: Transfer to whom?

A. To Miss Canty.

The Court: You went to Mr. Oppenheimer for that?

A. Yes, sir.

The Court: What for?

A. Why I understood—

Q. Why would you go to Mr. Oppenheimer after you had transferred the property?

A. Understand, we sold property, we obtained loans and this loan was to be obtained, whether the property remained with me or was sold to Miss Canty. Now, the contract of sale was entered into between Miss Canty and myself on December 28th. At that time I had no idea that there was going to be any complications whatever; I had every reason to have the loan consummated for the purpose of the transfer, but as soon as I found—

The Court: For the purpose of retransferring?

A. No, sir; for the purpose of selling the property to Miss Canty. As soon as I found out there were going to be complications, I didn't want to waive any rights; or anything of that sort, so I called off that end of the proceedings.

Q. What complications did you find out there were to be?

A. I didn't know, according to the daily papers, exactly what might occur; they put great big head lines in the papers, "decamped, absconded," and all that sort of thing and I didn't know what it might all amount to.

Q. What was the date when Mr. Humphreys ran away?

Mr. Durrell: December 20, 1910.

The Court: Was it in the papers immediately?

Q. No, sir; not until about the 28th.

A. The first day of January an article appeared in the Cincinnati Post, which to my recollection was the first intimation the public press had had that Mr. Humphreys had decamped. I have a copy of that here.

By the Court:

Q. When were your negotiations made with the Misses Canty?

A. They were prior to December 28th; prior to December 28th, we entered upon the contract.

Q. You say that at that time you thought there would be some complications?

A. No, no sir; I said when I went to see Mr. Oppenheimer, which was after this time; I was negotiating this loan—instead of Miss Canty using the moneys that she had, she was going to get this loan on the property through us. It was an ordinary transaction with our firm, to sell property to other people and obtain loans thereon, so that the payments, etc., could be made in the easiest way.

Q. Was that what was done in this case?

A. That was what was being done in this case; but as I say the transfer was made to the Misses Canty on December 31st; they used their own money, which they expected to get back in the shape of a loan.

Q. You mean they paid you in cash?

A. Yes, some.

Q. And you were then going to get a loan for them?

A. I just would assist them.

Q. Why did you take any cash at all?

A. Because, that finished up the transaction for the time being.

Q. If you were going to borrow money for them, why did you take cash, why did you require them to pay cash? Why didn't you get the money from the person who was to loan it?

A. Well, the reason the transaction went through on December 31st, we had had the contract on December 28th and Miss Canty had certain moneys, the Misses

Canty had, which they used in this transfer, in this sale; but they were people who had not unlimited wealth, in fact they were working girls.

Q. I asked you the question, if you were going to get the loan, why did you require them to pay cash, or any more than part cash?

A. Because, we generally do not transfer a deed until we get paid for it. I do not transfer property until I have the full consideration.

Q. I understand that of course?

A. Now, the full consideration in that case was paid to me.

By Judge Davis:

Q. Who is Miss Canty?

A. The young lady sitting at the table there, one of them is Miss Jennie Canty and the other is Miss Nellie Canty.

Q. In whose employ is she?

A. Miss Jennie Canty is with the Cincinnati Planer Company; she is the bookkeeper for them and has been for sometime.

Q. To whom did you make the transfer, Mr. Carey?

A. To Miss Nellie Canty, who has been a bookkeeper for our firm for ten years—to both of them.

The Court: Who was the transferee in the deed?

A. I say both of them, Miss Jennie and Miss Nellie Canty.

Q. To the two girls?

A. To the two girls, yes.

Q. Which one is working in your office?

A. Miss Nellie Canty is our bookkeeper.

Q. She has been there for ten years?

A. She is our bookkeeper.

Q. Is she your stenographer, too?

A. If you mean by that, does she occasionally take letters, yes; so does the other clerk in our office.

Q. Who generally takes your dictation?

A. I generally write my letters in long hand.

Q. You dictate them once in a while, don't you?

A. Very seldom; I don't like dictation.

Q. Didn't you dictate letters to her about these loans, get her to take dictation about these loans upon this property?

A. I don't think I did, no.

Q. Can you say you did not?

A. I don't say I did not, no sir, but I don't think I did.

Q. Now Mr. Carey, don't you know that you did?

A. No, I don't know that I did, although it is possible, but I don't think I did.

Q. And that she knew about this whole transaction, the whole mix up between you and Mr. Humphreys?

A. She did not; she knew nothing about my relations with Mr. Humphreys; that is, I am speaking of my knowledge of what she knows; as far as I know, she didn't know.

Q. If you dictated about these loans, she would know?

A. If you have got any letters of mine, you can show them.

The Court: If there were not any letters he can't have them.

A. To the best of my recollection there were none; I am perfectly willing to show what there are there.

Q. How much did you sell this property for to your bookkeeper who had been in your office for ten years?

A. $5500.

Mr. Oppenheimer: I object to that; I think the form of the question is entirely objectionable. I don't think it is quite fair for counsel to put that question as he did.

The Court overruled the objection, to which ruling of the Court counsel for the defendant at the time excepted.

Q. What was the purchase price paid to you by the Canty sisters—they were sisters, weren't they?

A. Yes, sir.

Q. What was the purchase price?

A. $5500, the contract price.

The Court: Was there any other price?

A. Well, that was the price.

The Court: That was what they paid?

A. Yes, sir.

Q. How was it paid?

A. I took a house in Madisonville that was in the name of the same party, the Canty's, on a value of $3500. They paid me $1450 in cash and I took a mortgage on the Cameron Avenue house for $550.

Q. So you took in the Madisonville property at $3500?

A. Yes, sir.

Q. Don't you know that property is not worth over $2000 at the outside?

A. I don't know that.

Q. It was the homestad of these Canty people?

A. What do you mean by "homestead"?

Q. That is where they were living?

A. That is where they were living, yes.

Q. And you put that in at $3500?

A. I have afterwards sold that property at $3000, so that it must have been worth more than $2000.

Q. You have sold it?

A. That is to say, I have a contract of sale on it.

Q. But you have not then disposed of it?

A. Yes, I consider I have disposed of it, in a manner.

Mr. Oppenheimer: May I ask that Mr. Carey explain that transaction?

The Court: Yes, he is entitled to do that.

A. Well, you understand that our business is real estate. We sell property under different conditions. In this particular property at Madisonville, a man by the name of Dunlap, W. E. Dunlap, entered into a contract to purchase this house for $3000, with the understanding he was to pay me $100 in cash and $30 a month until such time as the purchase price had been reduced to $500, at which time I agreed to deliver him the deed and take a mortgage; in other words, the value of the property under the contract was $3000; that was the sale price he paid me, $100 in cash and is paying me $30 until such time as the payments he makes from month to month, from paying taxes, etc., less the interest at 6 per cent, amounts to $500 on the transfer, at which time I agreed to deliver him a deed and take back a mortgage.

The Court: For how much is the mortgage?

A. The difference between $600 and $3000.

Q. What is the name of this man?

A. W. E. Dunlap.

Q. How long have you known him?

A. Not very long; I hadn't known him—in fact I never saw him before Christmas.

Q. Was that contract in writing?

A. Yes, sir.

Q. Did it have reference, or was any question as to whether the title to your property there would be good, or anything of that kind?

A. The Cameron Avenue property.

Q. Yes?

A. No, sir.

Q. It had no reference to that whatever?

A. No, sir.

Q. And you paid $3500 for the house and now you are selling it for $3000?

A. Yes, sir.

Q. Losing $400 right there?

A. Yes, sir.

Q. What is the date of that contract?

A. I think I have it here; I am not sure. (Handing papers to Mr. Heintz.)

At this point an adjournment was taken to Saturday, April 13, 1912, at 9 o'clock in the morning at which time the trial was resumed as follows:

Walter J. Carey,

resumed the stand and testified further as follows:

Examined by Judge Davis:

Q. (Last question read?)

A. What contract was that?

Q. The contract about the sale of the Madisonville property?

A. Oh yes.

Q. You stated I believe that you had sold the Madisonville property to the man who is now occupying it and he was to pay you $30 a month?

A. Yes, sir. Here is the contract. (Exhibiting paper.)

Q. What is the fair rental of that property, suppose you were renting it, what would be a fair rent of it?

A. Well, a fair rent of it—to rent it for $21 a month.

Q. So a man is paying you on the purchase price itself at the rate of $9.00 a month?

A. Here is the contract. It is the same contract that we frequently make in this kind of deal; it was a contract of sale. This contract is for the sum of $3000, $100 to be paid in cash upon the delivery of this contract, $2900 with interest thereon as hereinafter stated. Without reading the contract I can explain to Your Honor that he pays $30 a month or more, on the first of February, 1912, and $30 on the first of each and every month thereafter until the several monthly payments shall equal the sum of $500, a credit on the principal, and the interest on said $2900, with interest at 6 per cent; this interest is calculated semi-annually. I allow the purchaser all that is paid over and above the 6 per cent, to apply on the purchase price of the property, to pay taxes, assessments and so on.

Q. If you take that $2900, that would be $154 a year interest?

A. Whatever it figures out.

Q. He pays you $360?

A. Well, over and above 6 per cent interest on $2900 is credited on the principal until such time as he pays $500 on the principal.

Q. So that it will take him several years to get down to pay $500?

A. Yes, at which time when that occurs, I give him a warranty deed.

Q. What business is this man in?

A. This man is a scale inspector, I understand, of the B. & O. R. R.

Q. Is he a friend of the Canty people?

A. I don't know; but I don't think the Canty people ever heard of him.

Q. How long had you known him before this transaction?

A. Well, he was brought to me on New Year's; it was a holiday I know; and I was at home; I got a telephone from a man in Madisonville, who is an agent and who I had told to sell the property; he said he had a customer —Mr. Hartlaw lives in Central Street in Madisonville and he is a general real estate man in Madisonville, about the chief one; he telephoned to my home and asked me if I could meet a gentleman who wanted to talk to me about buying a house; I told him yes, he said he would bring him right over. I told him that I would meet him at the Norwood Building & Loan; he didn't know where that was; then I said "I will meet you at Tompkin's Drug Store, across the street." I went over and had the interview with Mr. Dunlap which lasted probably an hour. I was asking $3250 for this house; he wouldn't give more than $2800 at first; finally we adjusted matters and he agreed to give a price of $3000—I say he agreed—he did not agree, but he said he would consider it; he said he would be down to my office the next day. He came down to my office and then after some little discussion he said that he would take the house at that price. We of course discussed the methods, etc., and how this contract would work out; I explained to him all these methods in the usual way, which was satisfactory to him. Then he paid me $100 and we drew up the contract that he afterwards signed.

Q. What is the date of that contract?

A. Did I say New Year's—It was Christmas—this contract was dated December 26th; it was Christmas instead of New Year's.

Q. Then you sold him that property in Madisonville on the 26th of December?

A. This is 1911.

Q. Not 1910?

A. Oh no; a year later. I had it rented for two months.

Q. Who was getting the rental then from January, 1910 for the ten months?

A. It was not rented that long.

Q. It was lying idle?

A. Yes, I had it for sale.

Q. Has he paid you up the $30 a month?

A. I should say he has.

Q. The property that you let the Canty girls have was the Humphreys property?

A. I don't understand your question—the property that I transferred to the Misses Canty was my property.

Q. But I say it is what we know as the Humphreys property?

A. It was my property, 2222 Cameron Avenue, Norwood.

Q. Known as the Humphreys property?

A. I don't know what it was known as, it was the house Mr. Humphreys and his family lived in, yes.

Q. That is all I wanted to know. Now, you testified here the other day when Mr. Oppenheimer was trying to negotiate a loan for you, that you asked him to call it off, there was some trouble about the title?

A. No, I don't know that I said that.

Q. What was it you said?

A. You asked me if I had any correspondence relative to the loans.

Q. Well, I didn't say that you told Mr. Oppenheimer yourself to call it off?

A. I called it off, yes.

Q. And didn't the Court ask you the question why and you said probably there would be trouble about title?

A. I don't remember that I answered that way; if I did, that was not the reason.

Q. That was not the reason?

A. No, sir.

Q. Didn't you tell the Canty people there would be some trouble about title, because you deeded to the Canty people either the same day, or the day after you called the loan off?

A. I don't get you just right. I deeded the property to the Misses Canty on December 31st, if my recollection is right.

Q. And did you call off the loan either on the 28th or the 29th?

A. I think I called off the loan proposition, to Mr. Oppenheimer, about December 28th or 29th.

Q. Yes, just the day before you deeded to the Canty people?

A. In other words I deeded it to the Misses Canty on December 31st.

Q. Are you able to say to the Court that your reason for calling off the loan was—that you did not say—that you did not want Mr. Oppenheimer's client to get into trouble, that there might be trouble about title?

A. No, sir; that was not the reason. Can I answer that further?

The Court: Answer the question, yes.

A. I want to say that the question was asked me, I think by Judge Davis, as to whether I had any corre-

spondence relative to these loans; at that time I did not know that I had any correspondence. I have since looked up my letter book and have found some correspondence that has refreshed my memory to a certain extent, so that I can give a full answer to that question, and the submission of the correspondence.

The Court: You are entitled to explain all you please.

Q. Yes, I am not objecting to that.

A. Now, I want to lay before the Court everything that I can, that throws any light upon the subject at all. (Producing letter book): I think in my testimony in answer to Judge Davis's question that I made the statement that to the best of my recollection, there was an application, or negotiation you might call it, at three different places, three different persons, for a loan on this property. I mentioned the Union Savings Bank, Mr. Oppenheimer and Mr. William J. Love. I had forgotten for the moment that Mr. William J. Love was a client of Mr. Oppenheimer.

The Court: There were only two then?

A. There were two, now the application to the Union Savings Bank & Trust Company was made along about the middle of December. My reason for that statement is that I had a letter from the Union Savings Bank dated December 12th, and my recollection is that I made the application upon their usual blank form, which they probably have. The letter from the Union Savings Bank people was addressed to me, W. J. Carey, and they said: "Referring to your application for mortgage loan of $3000 or $3500 on number 2222 Cameron Avenue, Norwood, we beg to notify you herewith that our Board at its meeting consented to allow you a loan of $3000 at the regular rate of interest, 6 per cent, payable semi-annually, June 1st and December 1st. Besides that there will be the following charges, examining title, $15; recording mortgage, $1.50; notary fee, 80 cents; if this is satisfactory to you please let us have check. Yours very truly.

That is signed by the secretary and treasurer.

In answer to that, on December 13th, I wrote them that in accordance with their request I enclosed to them my check for $15. "Kindly arrange to close the matter up as soon as you can." Now, about that same time, or shortly after that, I asked Mr. Oppenheimer if he had any money to loan on the property. I will say that the reason for my going to Mr. Oppenheimer was that after the examination of the title, I went over to see the Secretary and Treasurer and asked him if he had the matter all shaped up; he said, "Yes, I have got word from the Title & Guarantee Company and the title is all right:"

but then he says, "There are certain other reasons that we have decided not to grant the loan."

The Court: Had you seen Mr. Oppenheimer?

A. No, I saw Mr. Oppenheimer after this. I says to Mr. Koehler, "What is the matter?"

The Court: All this conversation is unnecessary; just the facts are what we are after.

A. Well, I tried to find out what reason he had and he didn't give me any reason. He had told me that the title was good.

Q. What day was it he told you that?

A. It was after this date, between this date and probably the twenty-fifth or twenty-eighth of December.

Q. Mr. Carey, wasn't it on December 15th?

A. Well, it might have been.

Q. Didn't he say to you that they had got a letter from Mr. Humphreys?

A. No, sir; he didn't.

Q. A letter dated December 14th?

A. No, sir; he didn't. As I say, I went over there and asked Mr. Koehler what was the reason for not granting the loan; Mr. Koehler wouldn't give me the reason, he simply said, "Well, we can't grant the loan." I endeavored to get a reason from him, but he wouldn't give me any. I tried to get the source of any information he had and he wouldn't give it to me.

Q. Didn't you learn there that on account of Mr. Humphrey's letter informing them that the property was not yours—that that was the reason? Didn't you learn that afterward?

A. In explanation of that I can read you a letter that I wrote the Union Trust Company on January 6th—

The Court: Do you think it is important to have this gone into in detail in this way?

Q. I think not?

Mr. Oppenheimer: It is extremely important in our opinion, in view of Your Honor's ruling that the matters connected with this transaction of the Canty people reflect upon Mr. Carey's knowledge and motive.

The Court: As to the fact, yes, but all this detail is what I am talking about.

A. Let me read this: "During sometime in the month of December I applied to you for a loan on my property on Cameron Avenue, Norwood. This application was made by me in absolute faith and when title was examined by the Guarantee Title & Trust Company, a report was made to your institution approving the title. I was much surprised therefore upon calling on your Secretary, Mr. Koehler, to hear him state that although

our title is good, the bank had received other information which would deter it from making a loan at that time. I asked Mr. Koehler several times to furnish me his reason, but each time was met with a refusal, although advising me that title was in me and satisfactory report had been made by the Title Company, he stating that he had information that made it advisable not to make the loan as yet. Yesterday a copy of a letter undoubtedly sent to you was found among Mr. Humphreys' effects. This letter was dated I think December 14, and explains to me Mr. Koehler's attitude in the matter of this loan. The letter makes serious claims and I of course feel that under the circumstances you would and should hesitate to make the loan; however as your officials, especially your Mr. Koehler, have information of my business career and have come in close enough contact with me to know that my past has held not one discreditable act, it seems to me that this alone should have prompted him to have at least disclosed to me the nature of this claim, even had he not disclosed its source. As to the alleged confession of Mr. Humphreys wherein he states he had forged his wife's signature to the deed, I am pleased to state that I have proved this claim at least is untrue."

The Court: You are simply wasting time. Here is a long self-serving letter written by this man that is not worth anything as evidence.

Q. Now Mr. Carey, you said you had made application to somebody else. What is the date of that?

A. I haven't got the exact date.

Q. Haven't you got it there in your book?

A. No, I have no letters, but my recollection is that when Mr. Koehler notified me that the bank would not at that time make the loan, I then went to Mr. Oppenheimer. Mr. Oppenheimer had a client I understood that had already loaned money on property of ours—that is of the firm.

By the Court:

Q. What day did you get that information from Mr. Koehler?

A. It must have been somewhere along the 20th, or may be sooner; it was after I made application, giving them time to examine the title and then several days afterwards I went over there.

Q. What day was the deed put on record?

A. The house on Cameron Avenue went on record November 16. This was in December.

Q. When was the application first made?

A. About December 10th or 11th, sometime along there, about the middle of December. It was on the

twelfth that letter is dated about the fees, that is the $15. I sent him the $15 on the 13th. Now, Judge Davis has specified a date somewhere along the 15th or 18th or 20th. I went to Mr. Oppenheimer and asked him if he had anybody that could make a loan on this property. He mentioned a William J. Love; it developed that Mr. Love didn't have as much as I wanted; he only had may be $2000 or $2200. Upon Mr. Oppenheimer and I talking the matter over, he then said that he had another client, The Provident Savings Bank & Trust Company; so he went ahead and negotiated with them for a loan; but on about the 28th or 29th, I don't know which date, I called up Mr. Oppenheimer and called off the loan, telling him I had sold the property.

By Judge Davis:

Q. Why didn't you say that the other day when you were on the stand?

A. As a matter of fact I had forgotten just the circumstances; it is usual for us sometimes to get loans for customers.

Q. You sold the property the day you got the deed?

A. Yes, sir.

Q. You are sure of that?

A. Sure of what?

Q. That you sold the property the day you got the deed?

A. The day I made the contract, on the 28th of December, I sold the property, but it was consummated on December 31st, the papers were filed, which I think was on a Saturday.

Q. Isn't that contract, wasn't it really dated December 31st?

A. Why, I have got the contract.

Q. But wasn't it actually dated December 31st?

A. The contract will show.

Q. I mean the contract about the sale of the Humphreys property to the Canty girls? That is, it was really executed on the 31st but dated the 28th?

A. It was dated on the 28th; of course it took a couple of days to acknowledge the deeds, etc.

By the Court:

Q. That was the 30th then?

A. On the 28th the contract was signed and entered into.

Q. When was it consummated?

A. The contract was entered into—

Q. I asked you when it was consummated?

A. You mean when was the money paid?

Q. And the papers passed?

A. The papers were passed, or rather it was filed and I think passed on the 31st, the morning of the 31st, that was a Saturday.

Q. That was the day the money was paid to you?

A. $50 was paid to me on that day, three days after the 28th.

Q. That was the question that was asked you?

A. I didn't know just what you meant by consummation.

By Judge Davis:

Q. Now, you knew that Mr. Humphreys was gone at that time?

A. I knew not that Mr. Humphreys was gone, until the first information I got—I think the first intimation I got that Mr. Humphreys was gone was in the afternoon of the 31st of December.

Q. And wasn't this deed made late in the afternoon of December 31st?

A. The deed to the Misses Canty, why, it was filed for record on the 31st of December, at noontime.

Q. That is the deed to the Canty people?

A. Why sure. Mr. Willis Durrell came into my office about January 3rd, for the purpose of verifying or seeing the signature of Mrs. Humphreys.

Q. The deed was made on the 31st of December, executed by you to the Misses Canty, is that right?

A. That is my recollection.

Q. When was it left for record?

A. At noon on December 31st.

The Court: Where is that deed?

Mr. Heintz: It is right here.

The Court: That will show what time.

Mr. Heintz: It reads, "Transferred December 31, 1910, R. E. Edmondson, County Auditor. Received for record, January 3, 1911. Recorded January 9, 1911."

A. My recollection was, that it was filed at noon on Saturday.

Q. Mr. Carey, didn't you send for Mr. Durrell to come over and look at the signature?

A. No, sir; I didn't.

Q. And wasn't that this signature of Mrs. Humphreys that you are talking about, to this deed of Humphreys to you?

A. On January 3, the public press had this disappearance. Sunday was the first, Monday was the second, two holidays. On January 3rd, Mr. Durrell called me up and he said he was curious to see that deed.

Q. Now, didn't you call him up?

A. Possibly I did, but I don't think so.

Q. Then why did you say that Mr. Durrell called you?

A. I said to the best of recollection; however, there was a message passed between Mr. Durrell and myself. Mr. Durrell came to my office for the purpose of seeing the signature to this deed, and there were several people present, Mr. John Walters of the Enquirer and another man in the Enquirer and I was sitting at my desk talking to Mr. Walters.

Q. Can't you make that explanation short?

A. And Mr. Durrell came into my office and I got out the deed; he looked at it; I showed him Mr. Humphreys' signature first and he said, "That is John's signature all right." I said, "Yes, that is John's signature. I had rolled it up so that his signature showed. Then I rolled it up a little further and I said, "What do you think of that?" He said, "That is Hattie's signature. I said, "Would you know Hattie's signature?" He said. "I should hope so; I have taken acknowledgments, some of them of Mrs. Humphreys; I have seen it lots of times, and in letters from them."

Q. Now, I didn't ask you all that, Mr. Carey?

A. I know you didn't but I am telling you what happened. After a few more words he went out, saying he was satisfied that that was Mr. & Mrs. Humphreys' signature.

The Court: How did you happen to have the deed in your possession, the deed to you from Mr. & Mrs. Humphreys?

A. I had that deed away since last August; we don't turn over deeds, the old deeds are very frequently kept. We make a warrantee deed which would be sufficient for the purchaser. For instance, when I got a deed—when I got the deed from Mr. Humphreys, I didn't ask him for all the old deeds he had, that was not necessary. As a matter of fact property is sometimes bought and sub-divided and I couldn't give them the old deeds, because the old deeds refers to property that he is not interested in. As it developed in this particular case, there was a lot back of his property that I didn't get.

Q. Nothing has been said about all that?

A. Yes, something was testified about that.

By Judge Davis:

Q. Who looked up the title for the Cameron Avenue property.

A. I don't know; I don't know whether Mr. Heintz examined it or not.

Q. Mr. Heintz was your lawyer?

A. Well, I say I don't know. You will have to ask the owner of the property.

By the Court:

Q. How long were you in negotiations with the Misses Canty?

A. The original negotiations started on the morning of December 28th; it didn't take us very long to negotiate; we drew up the contract on December 28th.

Q. That was when it first began?

A. Yes, on December 28th.

Q. On the same day you commenced to talk about it, you entered into the contract?

A. Yes, sir.

Q. Had you ever talked with them before about making an investment in the property?

A. No, sir; not particularly.

Q. How did you happen to talk to them?

A. I will say this now: We had some property over on Washington Avenue that Mr. Ziegler had spoken to Miss Canty about.

Q. When?

A. But she didn't want it. That was sometime previous.

Q. How did you happen on that day to talk with Miss Canty on the subject of selling the property?

A. It happened in this way: Of course Miss Canty is in our office. I made the remark that I would like to sell that property; I had made that remark several times previously.

Q. In the open office?

A. Yes, sir.

Q. Who else was in there?

A. Mr. Ziegler is in there with me; our office boy was in there.

Q. You said to the company there that you would like to sell that property?

A. I would like to sell that property.

Q. Then what happened?

A. On this particular morning Miss Canty said, "How would you like to make a trade with us?" Well I said, "What have you got?" Of course I knew they lived in Madisonville. So she says that they had got a house in Madisonville; I asked her how much encumbrance there was on it, and she said none. Well, I says, "What do you value the property at?" She says, "What do you value your property at?" Well I says, "I think it is easily worth $5500." She says, "Well, if you can make a trade whereby you can take our property in exchange, I would like to make a trade with you." We talked that way and it didn't take very long; I asked her what else she had that she could put into the property

and she told me; I says, "All right I will make the trade with you." Thereupon we drew up a contract; my recollection is, that she telephoned to her sister to ask her about it.

Q. That is the way it happened?

A. Yes, that is the way it happened. Then I drew up a contract and we both signed the contract and that night she took it home with her and her sister signed it there. That day she gave me a check for $50.00 binding the bargain.

Q. Had you been out to Madisonville to see it?

A. Oh, I had seen the house; I had seen it several times. I was out there one time previously when they had installed some plumbing; she asked me—we were in the building business, you know, and she wanted a plumber to go out there and instal gas and she asked me about it. I went out there—oh yes, I had seen the property.

Q. Did you know how many feet front there were?

A Yes, I knew—I didn't know just exactly, but she told me there were 57 feet there; I think the property was 150 feet deep. I knew the property well enough to know what I wanted to do; I thought the trade was a fair one.

Q. How many times had you been out in Madisonville? A little while ago you said you knew they lived in Madisonville?

A. I knew they lived there; I had seen the house at other times and then I have been past it, and on the cars around there, the car from Norwood runs over that way, right past the house.

By Judge Davis:

Q. Was that an old house?

A. I don't know how old it is, but I can say it is in awful good condition, if it is; it is a well built house.

Q. Do you say that they signed the contract on the 28th?

The Court: That is what he said.

Q. Did she call up her father and mother?

A. Well, now you are asking me what they did. To my recollection, Miss Canty, the lady in my office called up her sister.

Q. Didn't they say to you that they ought to consult their father and mother?

A. You will have to ask them what they did; I don't know.

Q. What did they say to you at that time?

A. To the best of my recollection, Miss Canty did call up her father and mother; that is, she called up her mother, and I know she called up her sister.

Q. Now, don't you know that they didn't have any telephone in the house at Madisonville?

A. No, I don't.

Q. And haven't got a telephone now in this house?

A. Haven't they?

The Court: The question was, whether Miss Canty told you that she would have to consult with her father and mother? You can answer that yes or no.

A. I don't recollect whether she told me that; I know that she told me that she had to call up her sister; I know she did call up her sister; but I don't know that she told me she had to call up her father and mother.

Q. The contract was made with the one in your office, and not with the other girl?

A. The contract was made with both of them; the contract was not signed by Miss Jennie Canty until that evening.

Q. But the contract had all been drawn up and everything, before she came to your house?

A. Before who did?

Q. Miss Jennie?

A. Miss Jennie didn't come to our office.

Q. Where did she sign it?

A. I told you that Miss Nellie Canty and I signed this contract in my office, and then that evening the contract was taken home by her and signed by Miss Jennie Canty.

Q. How do you know that?

A. Well, I don't know that, but I know that it was signed by her—I don't know it, except that it came back to me signed Jennie Canty.

Q. All the person you had any conversation about the deal with, was with your stenographer in your office?

A. I beg to say to you, Judge, that the lady in our office is not the stenographer; she is our bookkeeper.

Q. Well, I am asking you the question?

A. Yes, and I am correcting you.

Q. Well, the original dealings?

A. The original dealings were between Miss Nellie Canty and myself at our office; the contract was signed after she called her sister up and got her consent. Now you can construe that any way you want to. The dealings I considered were between myself and the Misses Nellie and Jennie Canty. The contract was not signed Jennie Canty until that evening. I want to say I have got confidence enough in my bookkeeper that when she brought the contract back to me signed by Miss Jennie Canty, that I understood it was her signature and it has since been confirmed by the action of that sister.

Q. With reference to this deal or trade, you never went out and examined the property there, with reference to this particular trade or deal?

A. On this particular day, no sir.

Q. Or anywhere near that date?

A. I told you I had examined the property; I had a general idea of what the property was, I had been through it, I had been there and it doesn't take me long to size up a house and know whether I want it.

Q. But you never went and examined the Madisonville property with reference to this deal?

A. It was not necessary.

Q. So far as the Humphreys' property is concerned, on Cameron Avenue, did the Misses Canty examine the property on Cameron Avenue that you got from Mr. Humphreys?

A. You will have to ask her that.

By the Court:

Q. How much of a loan did you want from Mr. Oppenheimer?

A. About the same, about $3000.

Q. How much cash did Miss Canty pay you?

A. $1450 in cash and I took a mortgage of $550 and took their property in for $3500.

Q. Why did you want to borrow $3500?

A. You mean previous to the sale?

Q. We are talking about this application to Mr. Oppenheimer?

A. That was previous to the sale. Sometimes, it is an easy matter to dispose of property, and then I was using the money in other matters.

Q. So that by this transaction with the Misses Canty you didn't get as much money for your purpose as if you had borrowed the money?

A. No, sir.

Q. Had you any particular purpose in view in borrowing that money?

A. Yes, I was doing some little business of my own that required, not especially the money itself, but a fair and comfortable bank account.

Q. What instant purpose was there?

A. Well, at that time I was buying and selling stocks.

Q. What particular stocks, and when, just at that time?

A. Well, I can't say; I wanted to borrow this money so as to make myself easy; I don't like to be in a position that I was straining things too much.

Q. Were you at that time wanting the money for your business purposes?

A. I have never at any time been in such a position that I couldn't get what I needed.

Q. The question was whether you did at that time or not?

A. I will say this—

Q. The question is whether you were short at that time, for personal or business purposes?

A. No, I don't think so?

By Judge Davis:

Q. Mr. Carey, Miss Canty was in your office and if she went out to examine that property that you were going to deed to her in Norwood, you would know it, wouldn't you?

A. I might and I might not. She was in my office, but she might have gone out at some other time; I don't know whether she did or not.

Q. You commenced talking about it on the 28th and you consummated the contract on the 28th?

A. As to Miss Canty's actions, you will have to ask her; I can't tell what her actions are.

Q. Did she leave the office at all on the 28th?

A. On Saturday?

Q. The 28th, between the time that you commenced talking about selling the property and the time she signed the contract?

A. I don't know; I don't think so, but I don't know. Of course you understand Judge Davis, that I am in and out; I am out a great deal of the time, as a matter of fact things might go on there that I wouldn't know.

Q. She had never seen that property?

A. You are asking me to answer something that I can't; I can't answer that; I don't know if she had or had not seen it.

Q. Didn't you advise her to go out and examine the property?

A. No, sir.

By the Court:

Q. Had you ever had any dealings with Miss Canty before?

A. Not in a real estate way, no, sir.

Q. In no other business way besides paying her her salary?

A. No, except as I say, the fixing up—that was just giving an opinion as to how things should go; I had nothing to say but to advise her about that installing of the gas business in the house; but then no trade, this is the only trade I ever had with her, or with them.

By Mr. Oppenheimer:

Q. Isn't it a fact that sometime during the spring, Miss Canty had asked you to see if you could sell the property for her?

A. You mean the Madisonville property?

Q. Yes?

A. Oh yes, she had—

Judge Davis: We object to that as leading; it has nothing to do with this case.

Q. Well, it might be necessary to refresh his recollection?

A. She had—if you had asked the question in a different manner, I could have answered it. She had wanted to sell her property.

By Mr. Heintz:

Q. I want to look at the check of December 28th. I hand you that check, Mr. Carey and ask you to see if that is the check you got on that date?

A. (Examining check.) December 28th, 1910, pay to Walter J. Carey, $50. That is right.

Q. Now look at these two checks that I hand you dated December 31, 1910, one for $850 and one for $550?

A. Those are the checks, I have endorsed them.

Q. Did you get the money on those checks?

A. I did, yes; one is made on the Union Savings Bank & Trust Company—so is the other.

Counsel for the defendant offered in evidence the three checks so identified by the witnesses.

Q. Look at that deed that I now hand you and see if that is the deed that you executed to Nellie K. Canty and Jennie Canty?

A. Yes, that is the deed. The acknowledgment is taken by Mr. Heintz.

Counsel for the defendant offered in evidence the deed so identified by the witness.

Q. One other question: You were asked by the Court about these notes given in January, 1910, which were surrendered to Mr. Humphreys in August, 1910, and you were unable to give the denominations of all of them; I will ask you whether or not you were in any other business during the year 1910, than that of Carey & Zimmerman as real estate and insurance men?

A. Well, at that time of course I was a member of the firm of Carey & Zimmerman, looking after their financial affairs. I was also a director and the treasurer of the Norwood Heights Company, looking after their financial affairs to a large extent.

Q. What was the Norwood Heights Company?

A. A Realty Company which is operating in that subdivision in which the Archbishop's palace has been erected. It required a great deal of attention.

Q. As Treasurer of the Norwood Heights Company tell us whether you had numerous operations in notes and checks?

A. Oh yes; there were a great deal of checks and notes passed through my hands, for all these different companies and parties.

Q. Were there any other business concerns or corporations?

A. I am the assistant secretary of the Norwood Building & Loan Company, the largest building and loan company in Norwood.

Q. Were you during the year 1910?

A. Yes, sir; I have been for about twenty-four years.

Q. Any other concerns that you were connected with in 1910?

A. Well, that is all I recollect just now.

At this point a recess was taken to two o'clock in the afternoon of the same day, Saturday, April 13, 1912, at which time the trial was resumed as follows:

Miss Nellie Canty,

called in behalf of the defendants, being first duly sworn, testified as follows:

Examined by Mr. Oppenheimer:

Q. State your full name to the Court?

A. Miss Nellie Canty.

Q. Where do you now live, Miss Canty?

A. 2222 Cameron Avenue, Norwood.

Q. Where are you employed?

A. Carey & Zimmerman, 41 East Fourth Street.

By the Court:

Q. You have been in the employment of Mr. Carey, or of Carey & Zimmerman for the last ten years?

A. Yes, sir.

Q. As bookkeeper and stenographer?

A. Well, as bookkeeper; I might call myself a stenographer.

Q. Is there any other stenographer there?

A. There is, yes. I do not call myself a stenographer.

By Mr. Oppenheimer:

Q. Where did you live before you moved to this Norwood property?

A. In Madisonville.

Q. How long had you lived there?

A. In that house five years.

Q. With whom did you live?

A. My parents, father and mother and sister.

Miss Nellie Canty.

Q. Was your father actively engaged in business in any way?

A. No, sir; not at that time, not while we were in that house.

Q. How long is it since he was actively engaged in business?

A. About ten years.

Q. At this time, who is maintaining the household?

A. My sister and I.

Q. Where is your sister employed?

A. Cincinnati Planer Company.

Q. You two support the family?

A. We do.

Q. How old is your father?

A. Eighty years old.

Q. Who owned the house in Madisonville in which you lived prior to January 1st, 1911.

A. My sister and I.

Q. How long had you lived there?

A. About five years.

Q. Who bought the house?

A. My sister and I.

Q. Now, coming down to the time when you purchased the house in which you now live, how did you first learn that that house was for sale? We are now speaking of the Cameron Avenue property?

A. I heard Mr. Carey remark in the office to Mr. Zimmerman that he had a house in Norwood on Cameron Avenue for sale, that he would like him to put it on his list for sale.

The Court: You mean Carey & Zimmerman?

A. Yes, sir, Carey & Zimmerman. I heard Mr. Carey say it and I heard Mr. Zimmerman remark that that was a very nice house that they had built, that they had built it and they ought not to have much trouble in disposing of it.

Q. To whom did you first speak about the purchase of that house?

A. Why, I spoke to my father and mother and to my sister.

Q. Did you speak to them prior to the time you spoke to Mr. Carey?

A. I did.

Q. Did Mr. Carey himself ever mention to you the sale of that house, prior to the time that you spoke to your family about it?

A. No, sir.

Q. Now state just what you did after that, leading down to the time when the negotiations of this purchase was entered into?

A. When I heard the house was for sale, I told mama and papa and my sister—we had wanted to sell our house and I said there was an opportunity I thought, that Mr. Carey had a house for sale on Cameron Avenue that would suit us.

The Court: When did you hear that?

A. In December, before Christmas.

The Court: That you heard him say that to Mr. Zimmerman.

A. Yes, sir.

Q. I will ask you if you had ever talked to them about the purchase of any other property which they owned?

A. Yes, sir.

Q. When and under what conditions?

A. Why, I don't know the exact date, but it was previous to that; Mr. Zimmerman suggested that I take a house we had on Washington Avenue in Norwood.

Q. You say, "we had" to whom do you refer?

A. The firm, Carey & Zimmerman, our firm.

Q. What resulted then?

A. Why, I wanted to see the plans. We had built the house and I looked at the plans and told them that I didn't think I would like that house; I didn't like the arrangement of the plan.

Q. What did you do when you heard about this house being for sale, after you had spoken to your family about it?

A. Why, I thought I would look in the book and see; I had an opportunity of looking up when that property was built and what it had cost to build it, and I did; I looked back in the ledger. I had not spoken to Mr. Carey about doing it, but I looked it up and saw what it had cost to put up. Then I looked at the plans and looked at the specifications and discussed it with my mother and the family and told them I thought it would just suit us precisely.

Q. In that office, in your employment, had you had occasion to refer to plans and specifications so that you understood what they meant?

A. Yes, sir; very often.

Q. You could get an idea of the property from the plans and specifications?

A. Yes, I could.

Q. Now, did you discuss the terms upon which you would be willing to enter into an arrangement of that kind?

A. Yes, I did.

Q. Just state how the matter was first brought to the attention of Mr. Carey and by whom?

A. Well, I had first spoken to Mr. Zimmerman before I spoke to Mr. Carey.

Q. State what you said to him?

A. I asked him what he thought about that house and what he thought of the price; we looked it up together on the book at that time, Mr. Zimmerman and I, on the tax duplicate; we found it was listed at $5000; Mr. Carey had given it to Mr. Zimmerman to list at $5500. I said, "Well, Mr. Carey is asking $5500 on that house; it is only listed at $5000 on the tax duplicate." He said, "I will say this to you, that if you get that house at $5000 you will be getting an unusual bargain; I wouldn't mind taking it at that myself as an investment." I talked to my family and we figured out what our lot was worth and what we would trade it in for. When I went to the office that day I told my mother and sister that I was going to talk to him about the purchase of the property. I said to him that morning, "We have been figuring some at home about buying that house on Cameron Avenue, if I can make a deal with you." He asked me what I had and told him what we had decided at home, exactly. We talked it over and finally agreed to take our house at $3500 and I agreed to give him $5500 for the Cameron Avenue property, together with as much currency as I wanted to put into it and I assumed a mortgage for the balance.

Q. What did you do with reference to consulting with your mother or sister before you signed the contract?

A. I had spoken to all of my folks and after we had the contract drawn up. I called up my sister and told her I was going to sign that; I told her I was going to sign it and what terms I had made.

Q. Did you examine or have the title examined in any way?

A. No, I did not.

Q. Why did you not do so?

A. Well, I thought of doing that in connection with getting out the mortgage for the $550; that is we talked over the expense it would be to get a loan in the Building Association and I said to my sister, "I would lots rather have a private loan, for we would get rid of some of the expense of the Building Association." I knew then that they would have to have an examination of the title and that it would cost something; I spoke of that to Mr. Carey; of course it would be my duty to pay that. He told me that he had just had his title examined by the Guarantee Title and Trust Company and that they said it was all right, so I didn't think it was necessary to have it examined again.

Q. You knew he had built the property. Did you know that he had sold the property?

A. Yes, sir.

Q. To whom?

A. To Mr. Humphreys.

Q. You knew also that the property had come to Mr. Carey from Mr. Humphreys again?

A. Yes, sir.

Q. State what you did with reference to talking with your sister before signing that contract?

A. Why I called her up at her place of business and told her I had taken the matter up with Mr. Carey and that we had drawn up a contract just in accordance with what we had spoken at home; that I would bring it home and she could read it over that night.

Q. What did she say?

A. She said, "All right, but if it suits you, it will suit me."

Q. What did you do with reference to informing your father and mother?

A. I had talked to them previously. Right after that I called my mother up over the telephone.

Q. Did you have a telephone in your home at that time?

A. I did. I said, "Now, we have signed that; now, we have sold the house and we will get ready to move."

Q. What, if anything, did your mother or father say with reference to whether or not they were in favor of the transaction?

A. Why, they said they were.

Q. Now, do you remember just when that was, that that contract was signed?

A. It was signed shortly—right after Christmas.

Q. Was it signed on the same day on which the contract itself was dated?

A. Yes, sir.

Q. Then if it were dated the 28th of December, 1910, that would be the day on which the contract was actually executed?

A. Yes, sir; if that be the date.

Q. What if any payment was made on that day, on account on the contract?

A. Nothing that day; that night I took the contract out to my sister. I didn't pay Mr. Carey anything until she had read it over and signed it; then she gave me her check for $50 that night and the following day I took the check for $50 together with the contract back to the office.

Q. Where did that money come from?

A. From the Citizens National Bank.

Q. Did you and your sister keep joint or separate bank accounts?

A. Separate accounts, each had our separate bank book.

Q. On what bank?

A. Union Savings Bank.

Q. What money was kept in those bank accounts?

A. Our savings, our earnings.

Q. The savings from your own earnings?

A. From our salaries, yes.

Q. How was the balance of the purchase money furnished?

A. On the day I received the deed, I gave a check for $850.

Q. Where did that money come from?

A. From my own bank book.

Q. Where did the balance come from?

A. From my sister, $550 out of her bank book.

Q. How was the title taken?

A. In whose name?

Q. Yes?

A. In the name of Jennie and Nellie Canty.

Q. Do you remember the exact date on which that transaction was consummated?

A. Yes, I remember it was December 31, 1910.

Q. Up to that time had you ever heard anything of any dealings of any kind whatsoever as between Mr. Carey and Mr. Humphreys?

A. No, sir; I had not.

Q. Did Mr. Carey ever dictate any letters to you with reference to his dealings with Mr. Humphreys?

A. No, sir; he did not.

Q. Did Mr. Carey ever dictate any of his personal letters to you?

A. No, sir; nor Mr. Zimmerman either; I have never once taken a letter from either member of the firm with reference to any personal affairs, social or financial.

By the Court:

Q. What other bookkeeper was in there?

A. We had a young lady at that time; who did mostly typewriting, the members of our firm were just as efficient on the typewriter as I am and they would prefer to write their own letters rather than dictate them.

Q. I asked you what other bookkeeper there was?

A. Oh—there is no other bookkeeper.

Q. Did you keep Mr. Zimmerman's private accounts?

A. No further accounts, only of the firm.

Q. You never kept any of Mr. Carey's private accounts?

A. No, sir.

Q. Did Mr. Humphreys deal with the firm as you remember?

A. Well, he had; we had his name on our ledger; I think he loaned the firm money on a certain piece of property.

Q. But in the stock transactions?

A. Oh no.

Q. You were the bookkeeper?

A. I was the bookkeeper for the firm.

Q. You kept the account of the transactions between the firm and its customers, the stock transactions?

A. No, sir.

Q. Who did that?

A. I don't know, unless they did it themselves.

Q. Didn't they have any bookkeeper do that?

A. Not for their private accounts.

Q. I didn't ask you that?

A. I don't think I quite understand you?

Q. I asked you if you kept an account in your book of the dealings between the firm and its customers as to stock transactions?

A. I don't understand the stock transactions; I don't understand what you mean by stock transactions.

Mr. Oppenheimer: Your Honor, this was not a stock brokerage firm at all; this was a real estate and building firm.

Q. Then you hand no account with Mr. Humphreys?

A. Excepting in a building way; he might loan the firm money on a certain piece of property and I would have the account with him just as I would have with a Building Association for a certain piece of property.

By Mr. Oppenheimer:

Q.. When did you first learn that there was any question of any kind as to Mr. Humphreys' transactions?

A. Why, the first I knew of it was in the first week of January; I saw an article in the paper; in the morning paper.

Q. Was that before or after the holidays?

A. After the holidays, about New Years.

Q. What did you do after you saw the account of these dealings or of this trouble in the paper?

A. As soon as I got to the office I said to Mr. Carey, "Did you see the article in the paper this morning?" And he said, "Yes" and then I said, "What do you think of it." I said, "Do you think there is going to be think of it" I said. "Do you think there is going to be any trouble about it?" He said, "I can't tell." I said, "Now, we wanted to move into that piece of property and

I wouldn't want to be removed after we got in there." He said to me, then, "I will tell you what I will do, if you want to, I will re-transfer that property back to you and give you back what you have given me, if you say so." I said, "Well, I will think about it and I will talk it over with my folks at home and see what they say." I did so that night. I told the folks what Mr. Carey had said "Mr. Carey has said if we want to—he don't know whether there will be any trouble about this or not, but if we want to he will take this property back again." My father said, "Now, we have got into this and got our things partly ready to go and set our heads on moving and I would just as leave move in." My sister and I talked about it at length that night; we finally decided we would take that house if we got possession of it and move right in.

Q. Do you remember how soon after that you did move in?

A. Yes, it must have been about three weeks.

Q. Had you ever spoken to Mr. Carey prior to this transaction about the possibility of selling your Madisonville house for you?

A. Yes, sir.

Q. How long before, if you remember?

A. We had spoken to him in the early summer.

Q. Of the same year?

A. Of the same year, 1910.

Q. Did you speak to him at that time and tell him why you wanted to sell, or anything of that sort, or fix a price?

A. Yes, I fixed a price and told him how I wanted to sell.

Q. What price did you fix, and for credit, or cash, or how?

A. I told him we wanted $3250.

Q. In what form?

A. Why, we would like to get cash for it.

Q. In the exchange you have testified you got $3500 in the exchange?

A. Yes, sir.

Q. And you allowed him on the Norwood property the price that he asked you?

A. Yes, sir.

Q. At the time when you first spoke to Mr. Carey about this property you have testified that it was you who opened the conversation?

A. Yes, sir.

Q. Did Mr. Carey ever suggest to you that he would like to sell that property to you, had he ever suggested that to you before?

A. No, sir.

Q. Did he ever tell you previously that he wanted to sell it?

A. No, sir; I don't think he thought about me.

Q. Did you have any idea at that time, or any knowledge of any circumstances surrounding the transaction by which Mr. Carey got this property, which would have led you to suspect that there was anything wrong with it?

A. No, sir; I had not.

Q. Did you know anything about Mr. Carey's personal dealings with Mr. Humphreys?

A. I did not, no, sir.

Q. Did Mr. Carey ever discuss them with you, or with any one else in your presence or hearing?

A. No, sir.

Q. Would you have entered into negotiations for the purchase of that property under any conditions, if you had suspected that there was anything irregular in the transaction?

A. No, for—

Q. I am asking that question with the full realization that the other side may possibly object, but I think it is perfectly proper in view of the fact that the motives of this young lady have been inpugned.

Judge Davis: It is objectionable, but go ahead.

Q. You may answer the question?

A. No, sir; I did not.

Q. When you purchased that, did you purchase it with the idea of renting it, or of moving into it and making it your own home?

A. To move into it.

Q. Mr. Carey, prior to the time when you purchased that property, had your parents ever been inside the property, to your knowldege?

A. The Norwood property?

Q. Yes?

A. No, sir.

Q. You stated that you and your sister purchased the property in which you lived prior to moving to Norwood? Had your parents ever been in that house before you bought it?

A. My mother had, but my father had not.

Q. Will you explain why it was that you purchased either piece of property without your parents seeing them?

A. Well, they would leave it to my judgment; they wouldn't take it unless I had seen it and father didn't take an active interest in those things; he is satisfied with what we are satisfied with and he didn't think it was necessary to go down there.

Miss Nellie Canty.

Q. You are now living in this property in Norwood and have been ever since?

A. Yes, sir.

By the Court:

Q. Did you see the deed from Mr. Humphreys at any time prior to the transfer.

A. No, sir.

Q. Prior to the purchase?

A. No, sir; I have no recollection of seeing the deed that Mr. Carey had.

Q Was the house down upon your list of houses?

A. For sale, yes sir.

Q. And did you have a number of houses for sale?

A. There were quite a few, may be four or five of our own; then we always had houses belonging to other people that we would sell on a commission basis.

By Mr. Oppenheimer:

Q. I want to hand you this check for $850 and ask you to state what that is?

A. Why, that is my check for $850 on my bank, book number 68838, Union Savings Bank & Trust Company.

Q. For what purpose was that given?

A. In partial payment of the house, December 31, 1910.

Q. And the total payment aggregated $1450 and for the balance I believe you said you gave a mortgage?

A. Yes, sir.

Q. By whom was that mortgage signed?

A. By sister and me.

Q. By your sister and yourself. And by whom was the note signed?

A. By my sister and myself.

Cross-Examination.

By Judge Davis:

Q. You are Miss Nellie Canty, you are the bookkeeper down there you say?

A. Yes, sir.

Q. Which is the elder, you or your sister?

A. My sister.

Q. You have been down there quite a number of years? You are a bookkeeper?

A. Yes, sir.

Q. Of course your bookkeeping consists principally of the real estate transactions and the insurance business?

A. Yes, sir.

Q. And you have seen a great many real estate transactions go on there?

A. Yes, sir.

Q. Those people make deeds?

A. Yes, sir.

Q. And you would be a witness and you understand all that business?

A. Oh yes.

Q. Quite well?

A. Why, pretty well, yes sir.

Q. Now, when you bought this house out in Madisonville, where did you live?

A. In Madisonville? We lived in Madisonville.

Q. At the time?

A. Yes, sir.

Q. When you did buy that, your mother went and examined it before you purchased?

A. She went with us.

Q. You went also?

A. I went to see it, yes.

Q. You went and examined it before you purchased it?

A. Yes, sir; it was right on the same street where we lived.

Q. Have you placed any improvements on that property since you bought it?

A. Yes, quite a good deal.

Q. What did you pay for that property?

A. We paid $2200.

Q. Wasn't it $2100?

A. No, the deed called for $2150; but we paid $2200.

Q. That house was a very old house?

A. About sixteen years.

Q. It has no conveniences in it—it has no furnace in it, has it?

A. No furnace.

Q. No baths, no modern improvements whatever?

A. It has water and gas.

Q. It stands out on a street, away out in one side of the town?

A. No, sir; it is on a nice corner lot.

Q. Isn't it out at the edge of town?

A. Not exactly, no; Wood Street runs up to the foot of the hill.

Q. The street is not made in front of it?

A. The side walk is and the street along the side of the 150 feet is all curbed and cemented and the street is made. I am speaking of the Madisonville house now.

Q. But your father did not examine it?

A. He never went in it.

Q. Your father and mother did not examine the Norwood property?

A. No.

Q. They never saw it?

A. Never saw it.

Q. That was very valuable property you were buying?

A. What was very valuable?

Q. The Humphreys property?

A. Why, it was $5500.

The Court: Do I understand you to say you had not seen it before you got the deed?

A. I had not been through it, no sir.

Q. You didn't go to see it?

A. No, sir.

Q. Yet you told the Court you had talked probably as early as Christmas with your sister and mother about it?

A. I did, yes sir.

Q. Why didn't you go out and examine the property?

A. Well, there were several reasons why I didn't; one was I had access to the books and they gave me information that I couldn't have got had I gone through the house. I talked it over with my sister and she said she would rather—

Q. Never mind what your sister said?

Mr. Oppenheimer: Yes, I think that is material.

The Court: Her sister can testify what she said.

A. Well, I talked it over with her.

Mr. Oppenheimer: These are the reasons why they did not go out to examine the property, Your Honor. I think it is material.

The Court: What the conversation was with your sister, you can not testify to.

Mr. Oppenheimer: Just tell the result of the conversation, what you decided?

A. I decided to look it up in the ledger and see what it had cost Carey & Zimmerman to put up that house, what it was worth when they built it; also to look over the plans and specifications, for I could tell more by those than I could by going through the house; I would rather have access to the plans and specification than to go through the house. If I did go through the house I wouldn't be able to tell how much the value of it was.

Q. Now, you said the house where you lived was sixteen years old?

A. Yes, our house in Madisonville was.

Q. That Humphreys house was about fifteen or sixteen years old, too, wasn't it?

A. Yes, sir.

Q. The books did not show you in what condition the house was at that time?

A. Yes, but then Mr. Zimmerman told me.

Q. I am asking you what you knew?

A. I knew the house was in good shape.

Q. Yet you never saw it?

A. I didn't go through it, but I believed what he said.

Q. Do you know whether it needed painting or if it had been kept in good repair or not?

A. I did.

Q. You, yourself personally?

A. Why, I knew it because I believed what Mr. Zimmerman told me; I took what he said.

Q. Just leave Mr. Zimmerman out?

A. That is the only way I could tell.

Q. You didn't go and examine the property for yourself?

A. Mr. Carey told me that Mr. Humphreys was out of the city at the time; he said that Mr. Humphreys was out of town.

Q. His sister-in-law was living in the house?

A. I didn't know that.

Q. Didn't Mr. Carey tell you that Mrs. Pierce and her daughter were there?

A. No, sir.

Q. At any rate, neither you or your sister went out and examined this property?

A. We didn't go through it.

Q. You didn't know what street it was on?

A. Oh yes; I had been in the neighborhood; I did know the street.

Q. How long before?

A. Well, I don't know; I don't know the exact date, but I knew the neighborhood.

Q. Do you know whether the street was improved in front of the house or not?

A. I did know that, yes.

Q. You didn't know just how the street assessments stood on the house, did you?

A. I did; Mr. Carey told me it was free.

Q. You were relying all together on Mr. Carey?

A. Yes, all together, to a certain extent, I was.

Q. The truth is, you relied for the whole situation upon what Mr. Carey said?

A. In the contract I had on the 28th, I had him particularly stipulate that the assessments were paid.

Q. Were you here this morning when Mr. Carey testified? Did you hear him testify this morning?

A. I did.

Q. He said the first time he spoke anything to you about selling the house was on the morning of the 28th?

A. Yes, sir.

Q. That is the first time?

A. That is the first time we talked it over.

Q. So then you hadn't said anything to Mr. Carey before the morning of the 28th?

A. No, sir.

Q. And before the morning of the 28th, Mr. Carey had told you Mr. Humphreys was out of town?

A. Before the morning of the 28th?

Q. Yes, you said a moment ago that Mr. Humphreys was out of town and you couldn't see it? Didn't you say a moment ago that Mr. Carey told you you couldn't look into the property, that Mr. Humphreys was out of town?

A. Yes, but I didn't know at that time, I didn't know the date. You mean the date that Mr. Carey told me that Mr. Humphreys was out of town?

Q. Yes.

A. No, sir; I don't know the date.

Mr. Oppenheimer: Can you fix it with reference to the time the contract was signed? Was it before or after that?

A. Why, it was after.

Q. It was after that?

A. Or on the day; it may have been on the day.

Q. Whatever was said or done, you relied upon Mr. Carey all together, about the whole business?

A. I relied upon him a great deal, yes sir; I had confidence in him.

Q. You said a moment ago that the first few days in January, when something came out in the papers, that you called Mr. Carey's attention and Mr. Carey then agreed to take the property back?

A. He did.

Q. Now, isn't it true that that agreement was made on the 28th?

A. No, sir.

Q. Didn't Mr. Carey say very possibly there might be some trouble about it?

A. No, sir; I wouldn't have entered into it had I known that on the 28th.

Q. You knew it on the first few days of January?

A. I didn't know what the trouble would consist of. I saw in the paper in the first week in January that Mr. Humphreys was out of town; I asked Mr. Carey on that occasion what he thought of the article, if we would have trouble with it and he said he didn't know, and then when he offered to take it back, it was then.

Q. You stated a moment ago that had you known there was trouble about the title on the 28th, you would not have entered into the contract?

A. No, sir.

Q. Five days afterward, about the fourth of January —

A. About the fourth.

Q. You did find out there was trouble and Mr. Carey then offered to take it back and you refused?

A. Yes, I did.

Q. What made you change your mind?

A. Simply because it had become a topic of conversation among our friends, that we were going to move there; they had come and bade us goodbye; there had been articles in the paper stating that the property had been transferred to us and I wanted to move into it, because we had made up our minds we had bought that property and we wanted to move in.

Q. That was the reason and the sole reason?

A. Well, of course we wanted the house.

Q. Do you recollect how soon you did move into the house?

A. February 8th.

Q. Did you go out there and ask Mrs. Pierce to give you possession of the property?

A. No, sir.

Q. Who did?

A. I don't know; Mr. Carey I suppose did.

Q. Don't you know he did?

A. He went out there.

Q. Don't you know he went out and had a row with the woman?

Mr. Oppenheimer: You are going into things that I think by no possibility can reflect upon the issues here.

Q. Isn't it true that Mr. Carey went out there alone to get possession of that property and you knew it?

A. I don't know who was with him.

Q. Didn't he go out there to get possession of that property after January 1st, 1911?

A. Did he go out alone?

Q. Did he go?

A. Yes, he went.

Q How many times did he go?

A. I don't know; I know he went once.

Q. Wasn't he there four or five times in a period of three weeks?

A. Not that I know of.

Q. And they had to call in the Marshal of Norwood to put him out of the house, one day, when he had a row?

A. I don't know.

Q. When he had a row with the Marshal of Norwood?

A. No, I don't know that.

Q. You heard it then?

A. Oh, I heard of it afterwards.

The Court: What did he go out there for?

A. Why, he went out—I don't know what he went out for.

Q. Why didn't you go out?

A. He turned it over to me upon a day, but I didn't move into it; I was anxious to get into it, I wanted to move into it, and we were ready in fact.

Q. But you never moved into the property until an order had been made here by the Court that you should pay rent?

A. I should pay a deposit, yes; I had to deposit $30 a month.

Q. With whom did you deposit that?

A. With Mr. Donohue.

The Court: What was the date of that?

Mr. Donohue; I can't give you the exact date, but the first rental was from the 15th of February to the 15th of March.

The Court: Didn't you move out until the 15th of February?

A. February 8th, we moved in.

Q. Now then, you say that you have been handling real estate deals there at the office. Did you ever take money to the bank for the firm?

A. Yes, sir.

Q. And did you ever do that for Mr. Zimmerman?

A. You mean personally?

Q. Yes?

A. No, sir.

Q. Nor for Mr. Carey?

A. No, sir; I have no recollection of it.

Q. Nothing but the firm alone?

A. The firm money.

Q. Generally when transfers were made there, the deed is delivered over to the purchaser of the property?

A. I suppose it is; I don't do the delivering of them.

Q. Was this deed made by Mr. Carey to you, turned over to you?

A. It was.

Q. What did you do with it?

A. I took it home and showed it to the folks.

Q. When did you take it home?

A. Well, we left it at the Court House for record; that was on the day I bought the property.

Q. Do you remember to what office in the Court House?

A. To Mr. Heintz.

Q. Took it to Mr. Heintz's office?
A. Mr. Heintz was right there.
Q. Didn't Mr. Carey tell Mr. Heintz to take that deed up to the Court House?
A. No, it was handed to me.
Q. You are certain of that?
A. Yes, sir.
Q. Why didn't you demand the old deed that Mr. Carey got from Humphreys?
A. Why, I didn't want that.
Q. Didn't it belong to you?
A. Why, I didn't think so.
Q. Now, isn't this the reason: That there was an understanding quietly between you and Mr. Carey that the property was to go back to him?
A. No, sir.
Q. You said that you had been about the real estate office and that you understood about turning deeds over?
A. Why certainly, turning over the old deeds; but I thought it was not done; when I bought the Madisonville property I didn't ask Mr. McKenzie for his deed; I never saw it; I never had it, no, sir.
Q. Who paid for the recording of this deed; did you or did Mr. Carey. I mean the deed from Mr. Carey to you?
A. Mr. Carey paid for it; I don't remember paying for it.
Q. That is true, that Mr. Carey paid for the recording of the deed, didn't he?
A. I think he did.
Q. Who drew up this contract between you and Mr. Carey?
A. I did.
Q. Who dictated it?
A. Why, we wrote it up together.
Q. Well, Mr. Carey was the one that dictated it?
A. Yes.
Q. You just simply agreed to his terms?
A. Why, I had something to say.
Q. What part did you say about it?
A. I told him we wanted $3500 for our Madisonville house.
Q. Then what else was said?
A. Then we agreed upon the amount of cash that I would pay.
By the Court:
Q. Was Mr. Heintz there at the time the contract was drawn up?
A. No, sir.

Q. When did he come into the transaction?

A. I didn't see him until the day the deed was passed.

Q. Who drew up the deed?

A. Mr. Heintz did.

Q. Did he bring it over to your office?

A. Yes, sir; and I signed it there and he took it right up then to record it.

Q. Did you see Mr. Carey pay him the money to put it on record?

A. No, sir.

Q. You don't know what arrangement there was about that?

A. No, sir.

Q. You know you did not pay it?

A. No, sir; I didn't pay it.

Judge Davis: Did you ever pay Mr. Carey anything since for the recording of the deed?

A. No, I didn't.

By Judge Davis:

Q. You had a deposit in the Union Savings Bank & Trust Company?

A. Yes, sir.

Q. How long had you been keeping an account there?

A. For about nine years.

Q. Have you got your book with you?

A. No, sir; I have not.

Q. Do you recollect how much you had on deposit there at that time?

A. Why, I had—well, together we had about $1600, the two of us, both books.

Q. Mr. Carey said nothing to you at any time, the day of the transfer or the day before, about taking this property off your hands should you have any trouble?

A. No, sir.

Q. When he said that to you was in the early days, the first four or five days in January?

A. That was after it came out in the paper that Mr. Humphreys had forged his wife's signature?

Q. Miss Canty, in the event of Mr. Carey's losing this suit, is there any present understanding between you and Mr. Carey by which he is to reimburse you?

A. No, sir.

Q. You are positive of that, are you?

A. I am positive of that, yes sir.

Q. Why didn't you ask Mr. Carey about the recording of the deed?

A. Why, I never thought about it.

Q. At least you didn't pay it, but Mr. Carey did pay it?

A. I suppose he did.

By Mr. Oppenheimer:

Q. Miss Canty, I just want to ask you whether either before, or now, or at any time there has ever been any understanding of any kind, any agreement in writing or otherwise, that you are to re-transfer that property to Mr. Carey under any conditions whatsoever?

A. No, sir.

The Court: What was it that Mr. Carey said to you about the re-transferring the property?

A. Why, after the papers came out that Mr. Humphreys had left and had signed his wife's name to the deed, forged her signature, I said to Mr. Carey, "Did you notice that in the paper? What does that mean?" He said he didn't know. I said, "We bought that property with the intention of moving into it; I wouldn't like to move in and be disturbed, have any trouble after we move in." He said, "Well, I will tell you what I will do, Miss Canty, if you are afraid of any trouble of that kind, I am willing to make a re-transfer," he says, "I will take back the Norwood property and deed back to you the Madisonville property and turn over to you this mortgage; I will do that if you want it." I said that I would talk it over with the folks at home. I spoke to them, talked it over with the folks and talked about what it was best to do. That night at supper we talked it over at length and my father said, "Well now, I think we ought to move into that house."

Q. You expected that he would, if there were trouble of any kind, turn the property back to you and take back his deed?

A. He said that then and I told him I would rather move into it.

Q. You have always understood that if you got into trouble you would not be at any loss?

A. No, sir; I never told him that.

By Judge Davis:

Q. What do you expect, if you lose the property now?

A. Why, I really don't know.

Q. Don't you expect Mr. Carey to make you whole?

A. I wouldn't expect that he would turn me out in the street and not give me back anything I have paid him, no. I would think my warranty deed would protect me in the property; I ought to have something, for I have certainly given him value.

Also

Miss Jennie Canty,

called in behalf of the defendants, being first duly sworn, testified as follows:

Examined by Mr. Oppenheimer:

Q. Miss Canty, where do you live?

A. At present, 2222 Cameron Avenue, Norwood.

Q. You are a sister of Miss Nellie Canty who was just on the witness stand?

A. Yes, sir.

Q. With whom do you live?

A. My father and mother and my sister.

Q. Where are you employed?

A. At the Cincinnati Planer Company in Oakley.

Q. How long have you been employed there?

A. Almost two years.

Q. Where were you employed on or about the 28th day of December, 1910?

A. At the Cincinnati Planer Company.

Q. The same place. Where were you then living?

A. At Madisonville

Q. How long have you lived there?

A. About five years.

Q. You lived there with your mother and father and sister?

A. Yes, sir.

Q. Your father is how old now?

A. Eighty years old.

Q. How long is it since he has been engaged in any active business?

A. About ten years.

Q. In whose name was the Madisonville property which you occupied there?

A Mine and my sister's.

Q. Did you pay for it in the same manner in which you paid for this, with your earnings?

A. Yes, sir.

Q. When did you first hear of the possibility of purchasing this house in Norwood, in which you now live?

A. My sister spoke to me in December, about the middle, she said something about it, she used to speak to me quite a good deal about it.

Q. Had you been talking for a length of time about moving from Madisonville?

A. Oh, yes; we had been talking about selling our place in Madisonville.

Q. Had you ever tried previous to that time to sell it, and if so through whom?

A. Yes, sir; we had through Carey & Zimmerman.

Q. Now, what discussion took place with reference to the purchase of the Cameron Avenue property at your home, and who participated in those discussions?

A. Well, I did and my sister, and all of us, we spoke about it in the evenings and had spoken of it for quite a long while; very many evenings at home it would be our topic of conversation. She told us about it, told us she thought it would be suitable for us.

Q. What arrangements did you decide upon, if any?

A. We talked it over and stated that we would be willing to trade in our house and give what cash we could and give a mortgage for the balance.

Q. You made this agreement at home?

A. Yes, sir.

Q. How much money did you have in bank then?

A. Between the two of us, about $1600.

Q. How long had you been keeping that bank account?

A. About nine or ten years; we had been quite a while, we had been saving as much as we could.

Q. Did you have a specific object in view for those savings?

A. Yes, we wanted to get another home; we were anxious to sell our home in Madisonville and get another place.

Q. Now then, when was it brought to your attention that the deal with reference to the Madisonville property had been closed?

A. On the 28th of December my sister told me she was going to enter into a contract that day with Mr. Carey.

Q. Then after the contract was entered into, what if anything was done with reference to obtaining your signature to the contract?

A. She brought it home that evening and had me sign it at home; of course I was employed and couldn't get down town during the day, so I signed it that evening.

Q. What was done with reference to the payment of account of the contract itself?

A. I made out my check for $50, signed it and she took it back to him.

Q. (Handing paper to witness.) That is your check for $50.

A. Yes, sir.

Q. When the deal was finally consummated how much money did you pay?

A. $550.

Q. Is this your check for that amount. (Exhibiting paper.)

A. Yes, sir.

Q. Those checks have been paid and your bank account reduced to that extent, by that transaction?

A. Yes, sir.

Q. Had you yourself been through the Norwood house prior to the purchase?

A. No, sir; I had not.

Q. Did you know about where it was?

A. I knew where it was, yes sir.

Q. Why didn't you go through it prior to your making the purchase?

A. Well, as my sister said, she knew Mr. Humphreys was out of town at that time, and we didn't go.

Q. What do you know with reference to your sister's knowledge of buildings, and ability to understand about them?

A. I knew that she knew quite a good deal about that, because she was familiar with the plans and specifications; she told me she had looked over the plans and specifications and had also looked in the ledger.

Q. Did she tell you that prior to the time she executed the contract, prior to the time that you signed the contract?

A. Oh yes.

Q. So that even before you had signed the contract, it had been talked about and she had explained about that and so on?

A. Yes, sir.

Q. Then subsequent to the signing of the contract, the deed was delivered?

A. Yes, sir.

Q. The deed to yourself and your sister?

A. Yes, sir.

Q. Now, did you know anything at all prior to that time about any dealings of any kind whatsoever between Mr. Humphreys and Mr. Carey?

A. No, sir; I did not.

Q. Did you have any knowledge whatsoever of anything connected with the title to that property that might have aroused your suspicion that everything was not all right?

A. No, sir; I had no idea.

Q. Would you or would you not have entered into that agreement under any conditions, if you had suspected everything was not all right with the property.

A. No, sir; I would not.

Q. When did you first learn of the fact that there was some trouble about Mr. Humphreys affairs?

A. Well, it was in January, along the beginning of January when we saw it in the paper.

Q. Did your sister ever speak to you with reference to that trouble as it might possibly affect the title to your own house?

A. Well, she told me that she had spoken to Mr. Carey when she saw the piece in the paper and that he had agreed to re-transfer our property, which we had given him, take it back, if we would care to have him do that.

Q. What did you decide?

A. Well, we spoke of it, we talked it over at home and decided we would keep it, as we had gone through that far with it, we decided we would keep it.

The Court: Did you tell him that?

A. No, sir; I didn't; I didn't see Mr. Carey, but I spoke to my sister, I told my sister that.

Q. So far as you know—

A. She spoke to him about it, I think, and agreed—we had talked it over at home and agreed to that and I told my sister it was all right, that we would keep it.

Q. Did you know then that it might be taken away from you?

A. No, sir.

Q. Did you suspect it might be?

A. No, sir; we didn't.

By Mr. Oppenheimer:

Q. I want to know from you if you ever had any suspicion at any time that there was anything at all wrong with the property, or the title to it?

A. No, sir; we did not.

Q. Was there ever any understanding, so far as you know, to your knowledge, that this property was deeded to you or to your sister and yourself with the understanding that it was ultimately to be re-transferred?

A. No, sir; no understanding of that kind whatsoever.

Q. Would you ever have moved into the property—would you ever have become a party to any such agreement?

A. No indeed; I would not.

Cross-Examination.

By Judge Davis:

Q. So far as you are concerned, you never had any talk with Mr. Carey about it at all?

A. No, sir; I didn't see Mr. Carey.

Q. Whatever arrangement was made about the property, was made between Mr. Carey and your sister Nellie?

A. She spoke to me about everything before she undertook anything.

Q. I understand, but all the agreements and arrangements were made between your sister, who was in his office and Mr. Carey?

A. Of course she spoke to him about it; I didn't see Mr. Carey; but she consulted us at home before ever she did anything.

Q. Whatever arrangement was made about the transfer and the transaction, was all done between you and your sister and Mr. Carey.

A. Yes, with my consent.

Q. But the agreement was between her and Mr. Carey—there might have been a secret agreement, for all you know?

A. I had every confidence in my sister; she told me everything; there is never anything secret between them—she told me everything; my sister and I work together always.

Q. Mr. Carey did say and you were informed that he was willing then to transfer the Madisonville property back to you, and you transfer back the Norwood property to him, and he return the money to you?

A. Yes, sir.

Q. Wasn't that just a week before that talk was had?

A. Before what?

Q. The week before—I mean following the 28th?

A. It was after we bought the property, why yes.

Q. Might it not have been between Mr. Carey and your sister even on the 28th?

A. What?

Q. That conversation?

A. Why, I don't know just when it was; but I know it was after we bought the property, it might have been the day that we bought it, I don't know, but I know it was after we bought the property.

Q. You thought you had got a great bargain in the Norwood property?

A. Well, we thought the house was worth that.

Q. Wasn't it worth about $6000, didn't your sister say it was worth over $6000.

A. No, sir; I don't know that she did; we paid $5500 and we didn't think we were paying too much for it; we were willing to pay that

Q. You never examined the property?

A. No, sir.

Q. Your sister never went out and examined the property?

A. She said she did not.

Q. She informed you of that, did she?

A. Yes, sir.

Q. When you bought the Madisonville property you folks went out and examined it before you bought it?

A. Of course we saw it; we had seen the house time and time again, lots of times.

By the Court:

Q. How long ago was that property bought?

A. About five years; it was on the same street that we had lived on.

Q. How long had you lived there?

A. We had lived in Madisonville about 30 years.

Q. How long had you been with this Planer Company?

A. Almost two years.

Q. Where were you before that?

A. I was with the Tower Shop Company, then I was at the Board of Public Service in Norwood.

Q. Did you keep an account at the Union Savings Bank & Trust Company?

A. Yes, sir.

Q. Have you your bank book with you?

A. I haven't it with me; I haven't our former book, but I have the book I am now using, but I haven't it here today.

Q. Your sister never said anything to you that if you should lose this property you would be reimbursed and made whole?

A. No, sir.

Q. There was no understanding?

A. Why, we didn't know this was going to come up.

Q. Wasn't there some understanding? You heard of the trouble early in January?

A. Yes, we did.

Q. And yet notwithstanding that, suppose you had known on December 28th, that there was trouble about the property, then what?

A. We wouldn't have bought it; we wouldn't have entered into the contract, had we known it.

Q. You did learn it six days later?

A. Yes, when we had entered into the contract.

Q. But Mr. Carey said he was willing to re-transfer it?

A. I know he did, we agreed to keep it.

By Judge Davis:

Q. Didn't Mr. Carey insist upon your keeping it, Miss Canty?

A. No, sir.

Q. Didn't he say, "Now you just keep that and later on if there is any trouble I will make you whole?"

A. No, sir; he did not.

Q. You are sure of that, are you?

A. Yes, sir; I am.

Q. Now, you said to the Court if you had known that there was any trouble on the 28th, you would not have taken it?

A. No, sir; we would not.

Q. You learned that there was actual trouble about five or six days afterward?

A. Well, we didn't know there would be actual trouble; just because there was that article in the newspaper, was no reason.

Q. Did you talk to Mr. Carey—did you ask Mr. Carey?

A. I didn't see him.

Q. Did your sister ask him?

A. Yes, just what she testified. I had no conversation with Mr. Carey at all, no sir.

Walter J. Carey,

re-called by the plaintiff, testified further as follows:
Examined by Judge Davis:

Q. Mr. Carey, I forgot to ask you a question. In January how many times were you out there to see Mrs. Pierce in order to try to get possession of this property? In January, 1911, and also in the early days of February?

A. Several times.

Q. How many times will you say to the Court?

A. Well, I was there two or three times perhaps; I don't know that I went two or three times to get possession of the property, but I was there two or three times.

Q. Weren't you there one day, that you went to the house and Mr. Durrell was there and you raised a row and they had to call the Marshal of Norwood, when you wouldn't leave the lady alone?

A. No. the facts he states are not true, Your Honor.

The Court: Is that so or not?

A. Not as he states it, no. I am willing to answer it.

The Court: Well we are not trying the controversy between Mr. Carey and the Marshal.

Q. Now Mr. Carey, if the property was the property of the Canty people, why didn't they go out there instead of you?

A. For the simple reason that I had given the Misses Canty a warranty deed and I had to deliver that property to them. I considered my warranty deed was an obligation and it was up to me to make good.

Q. That is your explanation?

A. That is my explanation.

The defendants offered in evidence an envelope, a notice from the German National Bank, three checks payable to Walter J. Carey, on the Union Savings Bank & Trust Co. and a deed from Walter J. Carey and wife to Nellie and Jennie Canty, all of which are thereto attached, made a part hereof and marked respectively Defendant's exhibits 'A,' 'B,' 'C,' 'D,' 'E' and 'F.'

And the foregoing was all the evidence offered by the defendants, and all the evidence offered by either party in the case

Mr. Durrell: If the Court takes cognizance of the entire case, then we have evidence on the question of values. When we began this case there was a sort of understanding here, or the question related to the deed of Humphreys, the action being to set that deed aside. Now, if the question of values of the property is necessary to determine the subsequent questions, then we have some evidence as to the value of these two properties. That would be the extent of our testimony: otherwise we would rest.

The Court: The other side want that question, if it arises, to go to a jury, so that I would not take it under those circumstances anyhow.

Mr. Durrell: Then we rest, that being the understanding.

The Court: Is there any doubt on this testimony about the good faith of these ladies?

Mr. Oppenheimer: Will Your Honor let me interrupt just a moment? Before we finally close, I don't know whether there has been any formal offer of the letters, checks and notes that were offered in evidence. They were really offered by the other side. We would like, if there has been no formal offer of the letters and checks which have been used in evidence, to have them offered.

The Court: They may be offered.

The Court: I see no reason why these ladies, the Misses Canty, should be held, but I would like to hear from you why the deed to Mr. Carey should not be set aside?

Mr. Oppenheimer: It comes then as a motion?

The Court: Well, it comes to more than that. I will hear from you as to why that should not be done.

Thereupon after hearing the arguments of counsel the Court ruled that the complainant might take a decree.

And thereupon, on May 2nd, 1912, the Court submitted to a jury the question of the value of the prem-

ises described in the bill of complaint, and the jury found the value of said premises to be $5625.00, and returned a verdict in favor of the complainant and against Walter J. Carey for $5625.00.

Defendant's Exhibit "A."

Return to
John E. Humphreys
Attorney at Law
307 Mercantile Library Bldg.
Cincinnati, O.
Post Mark Cincinnati, Dec. 14. 10 A. M., 1910.
Canceled two cent stamp.
W. J. Carey
Fosdick Bldg
4th St.
City

Defendant's Exhibit B.

Bring This Notice With You.
German National Bank,
N. W. Cor. Fourth and Vine Sts.
Cincinnati, O.

John E. Humphreys
Your Note for $1000, is payable Dec. 15, 1910. 57.50 Int.
Checks on other Banks offered in payment of Notes must be certified.

Defendant's Exhibit C.

Pass Book Must Accompany This Order Unless Book is Left at Bank.

$850.00
Cincinnati, O., Dec. 31st, 1910.
The Union Savings Bank & Trust Co.
Savings Department
Pay to Walter J. Carey or bearer Eight Hundred and Fifty Dollars.
On Savings
Accounts No. 68838. Sign here Nellie C. Canty
Always sign your name the way you sign the Signature Card.
Endorsed by Walter J. Carey.

Defendant's Exhibits.

Defendant's Exhibit D.

Pass Book Must Accompany This Order Uniess Book is Left at Bank.

$550.00

Cincinnati, O., Dec. 31st, 1910.

The Union Savings Bank & Trust Co.

Savings Department

Pay to Walter J. Carey or bearer Five Hundred and fifty no-100 Dollars.

On Savings

Account No. 75498. Sign here Jennie Canty.

Always sign your name the way you sign the Signature Card.

Endorsed by Walter J. Carey. W. J. Carey.

Defendant's Exhibit E.

Pass Book Must Accompany This Order Unless Book is Left at Bank.

$50.00

Cincinnati, O., Dec. 28th, 1910.

The Union Savings Bank & Trust Co.

Savings Department

Pay to Walter J. Carey or bearer Fifty and no-100 Dollars.

On Savings

Account No. 75498. Sign here Jennie Canty.

Always sign your name the way you sign the Signature Card.

Endorsed by Walter J. Carey. W. J. Carey.

Defendant's Exhibit F.

Know All Men by These Presents:

That Walter J. Carey and Alice M. Carey his wife of Norwood, Hamilton County, Ohio, in consideration of One Dollars and other good & valuable considerations to them in hand paid by Nellie K. Canty and Jennie Canty do hereby Grant, Bargain, Sell and Convey to the said Nellie K. Canty and Jennie Canty heirs and assigns forever, the following described Real Estate, situated in the Section 34 Columbia Township Norwood in the County of Hamilton and State of Ohio. Beginning at a point 1033-60 feet east of the east line of the Montgomery Pike, where same intersects the north line of Cameron Avenue, thence east along the north line of Cameron Avenue fifty feet to a stone in the north line of Cameron Avenue, and the east line of the Slane Tract thence extending north along the east line of the Slane

Tract 135 feet to a point; thence in a westwardly direction fifty (50) feet in a straight line to a point 135 feet from place of beginning, thence southwardly on a straight line 135 feet to the place of beginning, said Real Estate being same premises conveyed to said Walter J. Carey by deed recorded in Deed Book No. 1031 Page 458 of the Deed Records of Hamilton County, Ohio, and all the Estate, Right, Title and Interest of the said grantor in and to said premises; To have and to hold the same, with all the privileges and appurtenances thereunto belonging, to said grantee, heirs and assigns forever. And the said Walter J. Carey and Alice M. Carey his wife do hereby Covenant and Warrant that the title so conveyed is Clear, Free and Unincumbered, and that they will Defend the same against all lawful claims of all persons whomsoever, except as to taxes due and payable in June 1911, which grantees herein assume & agree to pay.

In Witness Whereof, the said Walter J. Carey and Alice M. Carey his wife, who hereby releases her right and expectancy of dower in said premises, have hereunto set their hands, this 31st day of December in the year A. D. nineteen hundred and ten.

Walter J. Carey
Alice M. Carey.

Signed and acknowledged in presence of us:
Norman G. Phillips
Michael G. Heintz

State of Ohio, Hamilton County, ss.

On this 31st day of December A. D. 1910, before me, a Notary Public in and for said County, personally came Walter J. Carey and Alice M. Carey his wife the grantor in the Foregoing deed, and acknowledged the signing thereof to be their voluntary act and deed.

Witness my official signature and seal on the day last above mentioned.

(Seal.) Michael G. Heintz,
Notary Public Hamilton County, Ohio.

(Endorsement): Warranty Deed. From Walter Carey and wife to Nellie K. Canty and Jennie Canty. Transferred Dec. 31, 1910. R. E. Edmondson, Aud. Received for Record, State of Ohio, Hamilton Co., Jan. 3, 8:30 a. m., 1911. Recorded in Deed Book No. 1038, page 238. Jos. T. Blair, Recorder. 1-9-1911.

SECOND AMENDED BILL IN EQUITY.

(Filed May 29, 1912.)

To the Honorable Howard C. Hollister, Judge of the District Court in and for the Southern District of Ohio, Western Division.

E. Reeder Donohue of Cincinnati, a citizen of the State of Ohio, as Trustee in Bankruptcy of the estate of John E. Humphreys, having been thereunto duly authorized by Honorable Charles T. Greve, Referee in Bankruptcy, to whom all bankrupt matters concerning said John E. Humphreys has been referred by this Court, brings this, his bill against Walter J. Carey, of Norwood, Ohio, and an inhabitant of the Southern District of Ohio, Western Division: Nellie K. Canty and Jenny Canty of Norwood, Ohio, inhabitants of the Southern District of Ohio, Western Division: Harriet A. Humphreys of Norwood, Ohio, an inhabitant of the Southern District of Ohio, Western Division.

Jurisdiction of said parties and the subject-matter herein having been conferred upon this Court by the Bankruptcy Act of 1898, as amended June 1910. And thereupon your petitioner complains and says that a petition in involuntary bankruptcy was filed in this Court on January 3, 1911 by Sophia Pierce and others against John E. Humphreys, that such proceedings were had thereunder, that on January 24, 1911, said John E. Humphreys was by this Court adjudged a bankrupt, and the Bankruptcy case was at the same time referred to Charles T. Greve, a referee in Bankruptcy in and for this district; that on February 15, 1911, your Petitioner was appointed trustee in Bankruptcy of said John E. Humphreys: and your Petitioner has given bond and qualified as such Trustee; that your Petitioner has been duly authorized by said Charles T. Greve, referee in Bankruptcy to bring this, his bill, in equity.

Your orator further says that prior to August 6, 1910, said John E. Humphreys, was the owner in fee simple of a piece of real estate fifty feet in front and one hundred and thirty five feet in depth, on the North side of Cameron Avenue in the City of Norwood, Hamilton County, Ohio, in the Southern District of Ohio, Western Division lying 1033-60 feet east of Montgomery Pike and known as 2222 Cameron Avenue, and the said Humphreys was in personal possession of said real estate, until he absconded on or about December 20, 1910, at which time Sophia Pierce, a sister-in-law, and member of his family, retained possession, having been left there by said Humphreys: subsequently your Honor directed your petitioner who

was at that time receiver in Bankruptcy of said John E. Humphreys, to take possession of said real estate and to rent the same to Nellie K. Canty and Jenny Canty, defendants herein, which he has done.

Your petitioner further says that on or about August 6, 1910, said Humphreys, executed and delivered to Walter J. Carey, a certain paper writing, purporting to be a deed for said real estate, for the stated consideration of one dollar, which deed was left for record with the Recorder of Hamilton County, Ohio, on November 15, 1910, and was recorded in Deed Book 1031, page 458 Hamilton County, Ohio, Land Records, but said Humphreys at no time delivered possession of said real estate to said Carey.

Your petitioner further says that said alleged deed was not intended at the time of its delivery by Humphreys to Carey to be an absolute transfer, but was to be held as security, only until Humphreys paid certain monies to Carey, in which case said alleged deed was to be destroyed or a re-transfer made, or if said alleged deed operated as a deed, it was given by said Humphreys to said Carey without valid consideration being paid therefor by said Carey, and was recorded within four months prior to the petition and adjudication of bankruptcy against said Humphreys. Said alleged deed is void for want of any legal considerations; if there was any consideration therefor, said consideration was an antecedent debt and giving deed in payment of an antecedent debt, when insolvent, was an act of bankruptcy, preferring a creditor within four months prior to the adjudication of bankruptcy.

Your petitioner further says that on or about December 28, 1910, said Walter J. Carey, executed and delivered to said Nellie K. Canty and Jenny Canty a deed for said above described real estate, for the consideration of one dollar and good and valuable considerations, which deed was left for record with the recorder of Hamilton County, Ohio, on January 3, 1911, and recorded in Deed Book 1038, page 238, Hamilton County Land Records.

Your petitioner further says that upon December 31, 1910, said Nellie K. Canty, executed and delivered to Walter J. Carey a deed for a piece of real estate in Madisonville, Hamilton County, Ohio, for the consideration of one dollar and good and valuable considerations, which deed was left for record on January 3, 1911, with the recorder of Hamilton County, Ohio, and recorded in Deed Book 1033, page , Hamilton County Land Records.

In no one of these deeds was the actual consideration stated. Said Nellie K. Canty was at the time, and is,

employed in the office of said Walter J. Carey, in the confidential relation to said Carey as your petitioner is informed and believes, of stenographer, or bookkeeper.

Your Petitioner further says that said Carey secured said real estate on Cameron Avenue illegally as aforesaid and made an exchange of same for the property owned by one occupying a confidential relation towards himself, and therefore your petitioner charges that said Carey by said exchange, endeavored to get said Cameron Avenue property out of the reach of John E. Humphreys and his creditors. Your petitioner admits that Harriet A. Humphreys is entitled to have her inchoate dower allowed her as against your petitioner.

Your Petitioner therefore prays that the said alleged deed from the said John E. Humphreys to the said Walter J. Carey be found not to be a transfer of said property, or if it is found to operate as a transfer that said deed be held for naught, and the deed from the said Walter J. Carey to the said Nellie K. Canty and Jenny Canty be set aside and held for naught and the title to said real estate on Cameron Avenue, as above described be found to be in your Petitioner, or, if your Honor holds that the title to said real estate is good in the said Nellie K. Canty and Jenny Canty, then, your petitioner prays that said Walter J. Carey be required to account to your petitioner for the fair market value of said real estate.

W. G. Durrell,

Solicitor.

(Duly verified.)

DECREE.

(Entered by Judge Hollister May 29, 1912.)

This day this cause came on to be heard upon the petition of the plaintiff, E. Reeder Donohue, Trustee, and the answers and cross petitions of the defendants, Walter J. Carey, Nellie K. Canty, Jenny Canty and Harriet A. Humphreys, and the evidence adduced in open Court,

whereupon the Court finds that the plaintiff, E. Reeder Donohue is the duly qualified Trustee in Bankruptcy for John E. Humphreys, and that said John E. Humphreys was adjudged a Bankrupt by this Court on January 24th, 1911, and that the jurisdiction of all parties and the subject matter herein is conferred upon this Court by the Bankruptcy Act of 1898, as amended in June, 1910, and that the said E. Reeder Donohue has been duly authorized by Charles T. Greve, Referee in Bankruptcy, to bring this, his bill in Equity.

The defendants having filed a motion to require all matters involved in this action to be submitted to a jury, said motion was argued and submitted to the Court; the Court over-ruled said motion to which defendants by their counsel excepted.

Thereupon this cause came on to be heard upon the pleadings and evidence and was submitted to the Court. The Court finds that the said John E Humphreys was, prior to August 6th, 1910, the owner of the property described in the Petition, and that said Humphreys was in possession of said real estate until this Court ordered same delivered to the defendant, Nellie K. Canty and Jenny Canty, who have paid rent on the same to the plaintiff herein, under an order of this Court.

The Court further finds that on August 6th, 1910, John E. Humphreys executed and delivered to the defendant, Walter J. Carey, a certain paper writing, purporting to be a deed for said real estate, for the stated consideration of One Dollar, and that said deed was left for record with the Recorder of Hamilton County, Ohio, on November 15, 1910, and was recorded in Deed Book 1031, page 458 Hamilton County, Ohio, Land Records, within four months before the adjudication of John E. Humphreys a bankrupt, and the Court finds that the said John E. Humphreys was insolvent on August 6, 1910, and that said Walter J. Carey had at that time resonable cause to believe that such a transfer to him, if made would effect a preference being given in payment of an antecedent debt. The Court finds that said deed from said Humphreys to said Carey, whether regarded as a transfer of title or as security for debt is invalid.

The Court further finds that on December 31st, 1910, said Walter J. Carey conveyed by warranty deed the said property to Nellie K. Canty and Jenny Canty, said deed being left for record on January 3, 1911, and that Nellie K. Canty and Jenny Canty were innocent purchasers thereof.

Said conveyance having placed said property beyond the reach of this Court. The Court finds that Plaintiff

is entitled to a judgment against said Defendant, Walter J. Carey, for the value of said property.

The Court further finds that Harriet A. Humphreys is entitled to the value of her inchoate dower interest therein. Upon application of Defendant, Walter J. Carey, and with consent of Plaintiff the Court submitted to a jury the question of the value of said property, and the jury by its verdict, found the value thereof to be Fifty-six Hundred and twenty-five ($5,625) Dollars.

It is therefore considered, adjudged and decreed that the title to the property described in the petition is in Nellie K. and Jenny Canty, and that the Plaintiff recover from Walter J. Carey the value thereof as found by the jury, being the sum of Fifty-six Hundred and Twenty-five ($5,625) Dollars, with interest thereon from the first day of this term and his costs herein expended; and the motion of Walter J. Carey to set aside said verdict of the jury and for a new trial is overruled, to all of which the said Walter J. Carey, by his counsel, excepts.

It is therefore considered and adjudged by the Court that the complainant recover from the defendant, Walter J. Carey, the sum of Fifty-six Hundred and Twenty-Five ($5,625) Dollars with interest thereon from the first day of this term, and his costs therein expended taxed at $

To all of the foregoing findings and decree the said Walter J. Carey, by his counsel, excepts.

It is further ordered that out of said money so received, plaintiff pay to Harriet A. Humphreys, the value of her inchoate right of dower, being Two Hundred and seventy-seven and 87-100 ($277.87) Dollars, and the title of Nellie K. Canty and Jenny Canty is hereby quieted as against any and all claims of Harriet A. Humphreys to and for her inchoate right of dower in said premises.

MANDATE.

(Filed January 16, 1914.)

United States Circuit Court of Appeals
For the Sixth Circuit.

United States of America, Sixth Judicial Circuit, ss:
The President of the United States,

To the Honorable, the Judges of the District Court of the United States for the Southern District of Ohio. Greeting:

Whereas, lately in the District Court of the United States for the Southern District of Ohio, before you or some of you, in a cause between E. Reeder Donohue, Trustee in Bankruptcy of John E. Humphreys, Bankrupt, complainant and Walter J. Carey, Nellie K. Canty, Jenny Canty and Harriet A. Humphreys, Defendants, a decree was rendered in favor of said Complainant and against the Defendant, Walter J. Carey, as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Sixth Circuit by virtue of an appeal and writ of error agreeably to the act of Congress, in such cases made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord, one thousand nine hundred and thirteen, the said cause came on to be heard before the said United States Circuit Court of Appeals for the Sixth Circuit, on the said transcript of record, and was argued by counsel:

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the writ of error be and the same is hereby dismissed and that the decree of the said District Court, in this cause be and the same is hereby reversed and the cause is remanded to the said District Court with directions to take further proceedings not inconsistent with the opinion of this Court. Costs of the appeal and error proceedings to be divided.

December 2nd 1913.

You, therefore, are hereby commanded that such proceedings be had in said cause, in conformity with the opinion and decree of this court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal and writ of error notwithstanding.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, the sixteenth day of January, in the year of our Lord one Thousand nine hundred and fourteen.

Frank O. Loveland,
(Seal.) Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

Costs to be divided.

Clerk	$ 36.20
Printing Record,	$
Attorney	$ 20.00
	$ 56.20

[Statement of Costs Attached.]

OPINION.

(Filed January 16, 1914.)

No. 2368.

United States Circuit Court of Appeals,
Sixth Circuit.

Walter J. Carey, Appellant, vs. E. Reeder Donohue, Trustee in Bankruptcy of John E. Humphreys, Bankrupt, Appellee.

Appeal from the District Court of the United States, Southern District of Ohio, Western Division.

Submitted October 16, 1913.

Decided December 2, 1913.

Before Warrington, Knappen and Denison, Circuit Judges.

Warrington, Circuit Judge. This was a suit brought by the trustee against the appellant and others in the District Court, to set aside an instrument, in form a deed, from the bankrupt to the appellant, conveying certain described real estate; all the respondents except appellant were dismissed during the trial. Appellant conveyed the property to certain of the respondents, who were found to have been innocent purchasers; and decree was entered in favor of the trustee for the value of the property in question, as fixed by the verdict of a jury which was empaneled only for that purpose. The case was brought to this court upon appeal and error. Counsel are all agreed that appeal was the

proper proceeding, and this is so clearly right that the error proceeding will be dismissed. The principal objections made to the decree will be stated as we progress.

(1) It is urged that the bill and its amendments do not sustain the decree. These pleadings fail to disclose with certainty upon what theory the suit was instituted. that is to say, whether the design was to charge that the instrument was given with intent on the part of the bankrupt to hinder, delay or defraud his creditors and so was null and void under Sec. 67*d* of the Bankruptcy Act, or whether it was meant to charge the execution of a preference within the meaning of Sec. 60 of the act. It would seem that the purpose was to charge the commission of these acts alternatively, and the trial court appears to have given permission so to do; but, apart from any question of right thus to plead, the bill and the amendments alike state conclusions of law rather than specific facts. However, the appellant appears to have understood the trustee to charge the execution of a preference; for, after denying knowledge of insolvency of the bankrupt, appellant averred that he "had no reasonable cause to believe that he (the bankrupt) was insolvent, and did not know and had no reasonable cause to believe that said conveyance from said John E. Humphreys to Walter J. Carey would create a preference over any other of the creditors of the said John E. Humphreys." In spite of this it is contended that appellant was not "notified that he must answer to the charge that at the time he accepted the deed from Humphreys he had reasonable cause to believe that the enforcement of the transfer would effect a preference." No objection was made on this ground to the bill and its amendments, and indeed their sufficiency was in nowise challenged. Besides, the case was tried upon the theory of preference, and this was also the basis of the decree.

It is true, as counsel claim, that this court has held that in a suit to set aside a voidable preference, it is necessary to allege that the person receiving the transfer had reason to believe that it was intended to give "a preference forbidden by law" (In re Leach, 171 Fed., 622, 625). While that decision was rendered before and the present transaction occurred since the amendment of 1910 to Sec. 60b, yet the element of reasonable belief of the creditor remains as a fact necessary in substance to allege. However, if the case made is otherwise sound, the most that could be accorded appellant would be to reverse and remand the cause for the purposes only of further and appropriate amendment to the bill and re-

entry of the decree (Page v. Rogers, 211 U. S. 575, 581; Dietz v. Horton Mfg. Co., 170 Fed. 865, 872—C. C. A. 6th Cir.; Newcomb v. Burbank, 181 Fed., 334, 336—C. C. A. 2nd Cir.). This could work no injury to any material right of appellant, and to do more than this would clearly prejudice the rights of the trustee and the creditors. It has been aptly said that "the bankruptcy act is remedial and should be interpreted reasonably and according to the fair import of its terms with a view to effect its objects and to promote justice (Botts v. Hammond, 99 Fed., 916, 920—C. C. A. 4th Cir.); and in working out these ends the bankruptcy courts have not indulged in technicalities wherever a liberal procedure was consistent with the substantial rights of the parties in interest.

(2) It is contended that the evidence does not sustain the decree. The decree recites that the evidence was "adduced in open court," and after finding that the "paper-writing, purporting to be a deed" for the real estate in dispute, bears date August 6, 1910, and was recorded November 15, 1910, "within four months before the adjudication of John E. Humphreys a bankrupt," it proceeds:

" * * * the court finds that the said John E. Humphreys was insolvent on August 6, 1910, and that said Walter J. Carey had at that time reasonable cause to believe that such a transfer to him if made would effect a preference, being given in payment of an antecedent debt. The court finds that said deed from Humphreys to said Carey, whether regarded as a transfer of title or as security for debt is invalid."

All the witnesses except the bankrupt testified in open court, and irrespective of his testimony it is plain enough from the record that the finding should be sustained as to the fact of his insolvency at the date named; and it is equally clear that the effect of any enforcement of the transfer in issue would be to enable appellant to obtain a greater percentage of his debt than any other of the creditors of his class. A more difficult question arises respecting the existence of reasonable cause on the part of appellant at the date of the instrument to believe that his transaction with the bankrupt would if carried out effect a preference. Every question of this kind is necessarily controlled by the facts and circumstances of the particular case. Aside from some principles that have general application, it rarely happens that the facts and circumstances of other cases, even though kindred in character, are helpful in solving the question in hand. Thus, it is a general rule that mere suspicion on the part of the creditor that his debtor is insolvent or that the

effect of a given transaction with him would amount to a preference, is not enough (First National Bank v. Abbott, 165 Fed., 852, 859—C. C. A. 8th Cir.; Stucky v. Masonic Savings Bank, 108 U. S. 74, 75); for in the absence of substantial evidence in that behalf his suspicions are fairly consistent with the ordinary desire of the creditor to assure himself of safety respecting the debt. On the other hand, general reputation for solvency of a debtor is not always a safe test of the good faith of his creditor who obtains or receives from him a transfer of property, because the relations between them and the circumstances of the transaction itself may satisfy every impartial mind that the particular creditor had abundant reason to believe that his debtor's financial reputation was false; while this might not be true at all in the debtor's transactions of an ordinary character with other persons. We say this both because of the claim made here touching the bankrupt's reputed solvency, and of its appearent explanation of some of the transactions that are in evidence, though not involving a transfer of any of his own property, and in which not even a suspicion of insolvency was aroused.

One way of testing the belief that should be imputed to the creditor receiving either a payment in money or a transfer of property in discharge of a past-due debt is to inquire whether reasonable cause to believe actually existed. Thus in Hewitt v. Boston Straw Board Co., 101 N. E. 424, 425, decided April 1, 1913, the Supreme Judicial Court of Massachussets, when considering a transfer alleged to be a preference under Sec. 60 of the Bankruptcy Act, said:

"Where there is reasonable cause to believe, that at the date of transfer within the statutory period the debtor is insolvent, and payment is accepted of a debt overdue, it is immaterial whether the creditor actually believes what may have been disclosed as to the true state of affairs. If he prefers to draw inferences favorable to himself, and to ignore information which would have led to knowledge that his debtor was in failing circumstances, he cannot set up his own judgment to the contrary, even if honestly entertained, as a reason why he should be permitted to retain a prohibited advantage."

It is strenuously urged that in considering the question of appellant's reason to believe in the existence of facts amounting to a preference, the testimony of the bankrupt shall be excluded. His testimony was taken in Honduras upon direct and cross interrogatories, but he declined to answer some of the cross-interrogatories for the reason, as he stated, that they "might tend to incriminate" him,

and a motion was made to suppress all his testimony because of his refusals to answer such cross-interrogatories. The motion was overruled, and we think rightly. It is to be observed that Sec. 860 of the Revised Statutes was repealed before such refusals were made (36 Stat. L. Pt. 1, 352); and this, of course, removed the foundation of that class of decisions which enforce answers by reason of the immunity the section afforded. Hence the bankrupt was at liberty to avail himself of the ancient rule that a witness shall not be compelled, in any proceeding, to give testimony which will tend to criminate him (Counselman v. Hitchcock, 142 U. S. 547, 563, 565; State v. Thaden, 43 Minn., 253, 255; 3 Wigmore on Ev., Sec. 2271, p. 3141). And to exclude all testimony the witness could give without incriminating himself, would be at once to penalize the exercise of the privilege and to invest the adversary party with an obviously undue advantage. Illustration of the practical effect of such a course is presented here through the fact that the deposition was taken in a foreign country and filed January 20, 1912; while the motion to suppress was made the 25th of March following, just two days before commencement of the trial. To say the least of such a situation, some regard should be given to the relevance and materiality to the case of the particular questions declined and of any responsive answers that could have been made to them. The main if not the sole object of the interrogatories the bankrupt refused to answer was to discredit his testimony in chief; and it is not at all certain that if he had answered he would have discredited his testimony any more than it was by witnesses who testified before the court concerning transactions which they, either for themselves or for others, had had with the bankrupt; and it is conceded on all hands that he had fled and was living in Honduras at the time he gave his testimony. Apart from the bankrupt's credibility, these cross-interrogatories did not call for answers that were relevant to the transactions in issue; and so the testimony sought must be regarded as immaterial. Where this appears, an entire deposition cannot be suppressed any more than it could if the immaterial interrogatories had in all respects been irrelevant (H. Scherer & Co. v. Everest, 168 Fed. 822, 826—C. C. A. 8th Cir.; White v. Solomon, 164 Mass., 516, 519.)

Such testimony as the bankrupt gave, if believed, tends strongly to establish the preference; but appellant on the witness-stand denied the most important parts of the bankrupt's statements in that behalf; and still it must be said that there are features of the record that tend

to corroborate the bankrupt and, aside from his testimony, to show grounds for reasonable belief on the part of appellant. It can serve no useful purpose, however, to recite the details of the testimony given either by the bankrupt or the other witnesses. The trial judge had the advantage of seeing and hearing all of the witnesses except the bankrupt; and every experienced lawyer knows what this means. While equal advantage exists here as respects the deposition of the bankrupt, yet this is not so as to the testimony of appellant; the important element of demeanor of the witness, like that of every other witness who testified before the court, is of course lacking. Indeed, the rule in such circumstances is not to disturb the judgment of a district court unless it is overborne by the clear weight of the evidence as disclosed by the record (Pugh v. Snodgrass, decided by this court November 4, 1913; Monongahela River Consol. C. & C. Co. v. Schinnerer, 196 Fed. 375, 379; L. & N. R. Co. v. Lankford, decided by this court December 2, 1913; The Printz Eitel Fredrich, 206 Fed. 898—C. C. A. 2nd Cir.; and see language of the present Mr. Justice Lurton, when speaking for this court, in City of Cleveland v. Chisholm, 90 Fed. 431, 434). It results that upon all the facts and circumstances of the case, we cannot set aside the findings of the decree.[1]

(3) It is insisted that recovery is barred by the four-months provisions of Secs. 60a and 60b. The argument is that the instrument in dispute is a deed of conveyance, which, although recorded within four months of the bankruptcy, was effective from its delivery as against every person except a bona fide purchaser. The basis of this is the deed-recording statute of Ohio (2 Ann. Ohio Gen. Code, Sec 8543, p. 48), and the rule laid down in Wright v. Bank, 59 O. S. 80, construing old Section 4134, which was like the present Sec. 8543 (2 Bates, p. 2295). It is held in that case (syl. 6):

"As against subsequent bona fide purchasers without notice a deed of conveyance of land, duly executed, must be recorded as provided in section 4134, Revised Statutes, but such record is not required as against other parties."

And it is then urged that the present case is governed by the principle settled in York Mfg. Co. v. Cassell, 201 U. S. 344, and the cases following it. This argument ignores the broad distinction between cases like York Mfg.

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[1]Attention is called to the facts which were regarded as sufficient to charge preferred creditors with reasonable belief, etc., in *Nat. City Bank v. Hotchkiss, Trustee in Bankruptcy*, and also *Mechanics & Metals Nat. Bank v. Ernst, Russell and Marshall, Trustees in Bankruptcy*, decided by the Supreme Court, November 3, 1913).

Co. v. Cassel and the one now under review. The class of decisons to which that case belongs involved instruments which were free from inherent legal infirmities, and as to setting them aside, the law then accorded to trustees only the rights of the bankrupts; while the present case concerns an instrument that is denounced by law as a voidable preference, and the trustee is distinctly empowered to avoid it for that reason. The distinction we seek to make clear is recognized in Richardson v. Shaw, 209 U. S., 365, where Mr. Justice Day, in passing upon an alleged preference and the rights of the trustee in bankruptcy touching a certificate of stock which had been held in pledge under contract and delivered by the pledgee upon demand and payment, said (378):

"Consistently with the terms of the contract, as understood by both parties, the broker could not have declined to thus redeem and turn over the stocks, and when adjudicated a bankrupt his trustee had no better right, *in the absence of fraud or preferential transfer, than the bankrupt himself*" (Italics ours).

Again, in Rouse v. Ottenwess & Huxoll, decided by this court November 11, 1913, Judge Knappen stated the distinction thus:

"The doctrine that the bankruptcy trustee 'stands in the shoes of the bankrupt' has no application to transactions which the trustee is, by the express terms of the act, authorized to avoid."

Moreover, upon like reasons it would seem clear, though we need not decide, that Wright v. Bank, supra (59 O. S. 80), would not be applicable to a case of preference if tested under and according to the Ohio statutes alone. For secs. 11104 and 11105 of the Ohio Statutes (5 Ann. Gen. Code, 449, 460) denounce preferences under stated conditions, and authorize the appointment of trustees to institute suits to recover the property transferred and administer it for the equal benefit of all the creditors. In short, the State policy is in substantial accord with the National policy respecting the avoidance of preferences and the ultimate distribution of their proceeds (In re Farrell, 176 Fed. 503, 510—C. C. A. 6th Cir.).

It remains to consider the effect of the four-months provisions of Secs. 60a and 60b. We look to the deed-recording act of the State for the purpose of determining whether under that act recording of the instrument under review was required. Concededly this was so as to bona fide purchasers; and the principle is settled in this court that through the operation of Sec. 60 upon a voidable transfer falling within such a state requirement, the trustee may avoid the transfer if registered within

the four-months period (Loeser v. Savings Deposit Bank & Trust Co., 148 Fed. 975; and in addition to the cases cited and commented on in the opinion in that case, see In re Beckhaus, 177 Fed. 141—C. C. A. 7th Cir.). Counsel endeavor both to distinguish the Loeser case and to show that it should not be followed. While we are satisfied from the evidence that in equity the instrument should be treated as a mortgage, yet we do not attach importance to this feature, because it has been held in Ohio that an instrument in form like this, unlike a legal mortgage, operates upon delivery to transfer title and so is required to be recorded as a deed (Kemper v. Campbell, 44 O. S. 210, 218).[1] Now in applying the Loeser decision we observe that the instrument there under review was a chattel mortgage, while the one now in question is a deed. We also recognize the right in Ohio to fasten a lien upon property covered by an unregistered chattel mortgage as against the mortgagee, and the absence of such a right as to real estate held by an unrecorded deed; but a bona fide purchaser could acquire a better right to the property than that possessed by the holder of either of such unregistered instruments. In applying the rights of a trustee in bankruptcy to this situation, he stood no better than the bankrupt at the date of the Loeser decision, provided the initial transactions and the instruments representing them, the chattel mortgage in the one and the deed in the other, were free from any inherent legal infirmities such as fraud or voidable preference.

When the registration provision of Sec. 60a was applied to the chattel mortgage involved in the Loeser case, the court was confronted with the question whether the word "required" was sufficiently comprehensive to include an unregistered chattel mortgage. This could not be determined without considering all the means which were then open to creditors to fasten liens upon, and to bona fide purchasers to acquire title to, the property described in the chattel mortgage; for plainly the chattel mortgagee was bound to take the risk of such liens and purchases. This presented classes of persons as to whom registration was obviously "required," but there was no risk as to bankruptcy unless the transaction was tinctured with fraud or voidable preference (In re Klein, 197 Fed. 241). The situation then evidently demanded of the court an interpretation of the word "required," broad enough to embrace all transactions that could dis-

[1]Whether, in view of later decisions, the rule of that case will be adhered to in Ohio, does not require present consideration.

place the rights of the holder of an unregistered chattel mortgage. Anything less than this would have rendered the world "required" meaningless.[1]

There can be no difference, then, between the ruling demanded in the Loeser case and the principle that should govern the instant case. Concession that a creditor could not through attachment, or the like, have acquired a right superior to that of appellant under his unrecorded deed (Wright v. Bank, supra), only results in diminishing the classes of persons against whom record was required; for it is manifest that the class of possible bona fide purchasers none the less remained. How then can it be that the difference between a deed and a chattel mortgage, as respects form and classes against whom registration is required, amounts to a distinction between this case and the Loeser case? Further, the form of the present instrument and its inherent infirmities, give to it every attribute that can be ascribed to a "transfer," as that term is used in either Sec. 60a or 60b; and this was true as to that sort of an instrument, even as those sections stood at the date of the Loeser decision. The sections themselves make no distinction respecting the form or the subject-matter of the transfers they condemn; and hence the reason for avoiding such a deed is in every conceivable sense as clear and as strong as can exist in respect of a chattel mortgage (Page v. Rogers, supra,—211 U. S. at p. 577).

It is vain to urge that the decision in the Loeser case should not be followed. It is said that the reversal of this court in York Mfg. Co. v. Cassell, impaired the strength of the Loeser decision; but besides the obvious distinction between the cases, the decision in the latter was rendered more than seven months later than in the other. The claim that this court has decided (In re Klein, 197 Fed. 241) that at the time the Loeser decision was rendered the law required the existence of insolvency and reasonable cause to believe to be found as of the date of the transfer and not merely the date of the record,

[1]We do not discuss the inference drawn by counsel from the amendment of 1910 to Sec. 47*a* (2) concerning the meaning of the word "required"; because the change wrought by the amendment in the position of the trustee would, if counsel's inference be sound, place limitations upon both the words "transfer" and "required," and so operate to change their natural meaning and also the manifest intent of Secs. 60*a* and 60*b*; and yet there is nothing in the amendment itself of 1910 to Sec. 47*a* (2) to indicate any such purpose. Moreover, when the amendment was under consideration in Congress, the avowed object was simply to escape the rule in *York Mfg. Co.* v. *Cassell* (Cong. Rec. Vol. 45, Pt. 3, p. 2554).

is met by the fact that the Klein case did not involve a preference, and also by the findings contained in the decree in this case.

Accordingly the writ of error is dismissed and the decree below reversed, with direction to take proceedings in conformity with this opinion; but the costs incurred below in bringing the appeal and the proceeding in error to this court and the costs here will be divided.

ORDER.

(Entered by Judge Hollister January 23, 1914.)

This day came the complainant, and pursuant to the mandate filed herein from the Circuit Court of Appeals for the Sixth Circuit, offered his third amended Bill of Complaint in conformity with the opinion of said Circuit Court of Appeals, and came the defendant, Walter J. Carey, and offered his amended answer to said third amended Bill of Complaint, and asked leave to file the same for the purpose of making the pleadings conform to the issues upon which the case was tried, and it appearing to the court that said bill and answer are necessary for said purpose, it is ordered that said bill and said answer be filed.

ENTRY.

(Entered by Judge Hollister January 23, 1914.)

Plaintiff having, by order of the Circuit Court of Appleas, and by leave of this Court, filed his Third Amended Bill to conform to the opinion and mandate of the Circuit Court of Appeals, it is ordered and decreed that the decree of this Court rendered on the 29th day of May, 1912, be re-entered, as of this date and costs be taxed in accordance with the mandate from the Circuit Court of Appeals.

DECREE.

(Re-entered by Judge Hollister January 23, 1914.)

This day this cause came on to be heard upon the petition of the plaintiff, E. Reeder Donohue, Trustee, and the answers and cross petitions of the defendants, Walter J. Carey, Nellie K. Canty, Jenny Canty and Harriet A. Humphreys, and the evidence adduced in open Court, whereupon the Court finds that the plaintiff, E. Reeder Donohue is the duly qualified Trustee in Bankruptcy for John E. Humphreys, and that said John E. Humphreys was adjudged a Bankrupt by this Court on January 24th, 1911, and that the jurisdiction of all parties and the subject matter herein is conferred upon this Court by the Bankruptcy Act of 1898, as amended in June, 1910, and that the said E. Reeder Donohue has been duly authorized by Charles T. Greve, Referee in Bankruptcy, to bring this, his bill in Equity.

The defendants having filed a motion to require all matters involved in this action to be submitted to a jury, said motion was argued and submitted to the Court; the Court over-ruled said motion to which defendants by their counsel excepted.

Thereupon this cause came on to be heard upon the pleadings and evidence and was submitted to the Court. The Court finds that the said John E. Humphreys was,

prior to August 6th, 1910, the owner of the property described in the Petition, and that said Humphreys was in possession of said real estate until this Court ordered same delivered to the defendants, Nellie K. Canty and Jenny Canty, who have paid rent on the same to the plaintiff herein, under an order of this Court.

The Court further finds that on August 6th, 1910, John E. Humphreys executed and delivered to the defendant, Walter J. Carey, a certain paper writing, purporting to be a deed for said real estate, for the stated consideration of One Dollar, and that said deed was left for record with the Recorder of Hamilton County, Ohio, on November 15, 1910, and was recorded in Deed Book 1031, page 458 Hamilton County, Ohio, Land Records, within four months before the adjudication of John E. Humphreys a bankrupt, and the Court finds that the said John E. Humphreys was insolvent on August 6, 1910, and that said Walter J. Carey had at that time reasonable cause to believe that such a transfer to him, if made would effect a preference being given in payment of an antecedent debt. The Court finds that said deed from said Humphreys to said Carey, whether regarded as a transfer of title or as security for debt is invalid.

The Court further finds that on December 31st, 1910, said Walter J. Carey conveyed by warranty deed the said property to Nellie K. Canty and Jenny Canty, said deed being left for record on January 3, 1911, and that Nellie K. Canty and Jenny Canty were innocent purchasers thereof.

Said conveyance having placed said property beyond the reach of this Court. The Court finds that Plaintiff is entitled to a judgment against said Defendant, Walter J. Carey, for the value of said property.

The Court further finds that Harriet A. Humphreys is entitled to the value of her inchoate dower interest therein. Upon application of Defendant, Walter J. Carey, and with consent of Plaintiff the Court submitted to a jury the question of the value of said property, and the jury by its verdict, found the value thereof to be Fifty-six Hundred and twenty-five ($5,625) Dollars.

It is therefore considered, adjudged and decreed that the title to the property described in the petition is in Nellie K. and Jenny Canty, and that the Plaintiff recover from Walter J. Carey the value thereof as found by the jury, being the sum of Fifty-six Hundred and Twenty-five ($5,625) Dollars, with interest thereon from the first day of this term and his costs herein expended; and the motion of Walter J. Carey to set aside said verdict of the jury and for a new trial is overruled, to all of which the said Walter J. Carey, by his counsel, excepts.

Decree—Petition of Walter J. Carey for an Appeal.

It is therefore considered and adjudged by the Court that the complainant recover from the defendant, Walter J. Carey, the sum of Fifty-six Hundred and Twenty-Five ($5,625) Dollars with interest thereon from the first day of this term, and his costs therein expended taxed at $

To all of the foregoing findings and decree the said Walter J. Carey, by his counsel, excepts.

It is further ordered that out of said money so received, plaintiff pay to Harriet A. Humphreys, the value of her inchoate right of dower, being Two Hundred and seventy-seven and 87-100 ($277.87) Dollars, and the title of Nellie K. Canty and Jenny Canty is hereby quieted as against any and all claims of Harriet A. Humphreys to and for her inchoate right of dower in said premises.

PETITION OF WALTER J. CAREY FOR AN APPEAL.

(Filed January 29, 1914.)

The above named defendant, Walter J. Carey, conceiving himself aggrieved by the order and decree made and entered on the 23rd day of January, 1914, in the above entitled cause, does hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Sixth Circuit for the reasons specified in the assignment of errors, which is filed herewith.

Wherefore, said defendant, Walter J. Carey, prays that this appeal may be allowed; that a transcript of the record, proceedings and papers upon which said order and decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Sixth Circuit, and that upon said defendant giving bond as required by law, said decree and order may be superseded and all proceedings in this court be suspended and stayed.

Morison R. Waite,
John R. Schindel,
Attorneys for Defendant, Walter J. Carey.

ASSIGNMENT OF ERRORS.

(Filed January 29, 1914.)

Defendant, Walter J. Carey, in connection with his petition for an appeal, says that the order and decree in this cause is erroneous, and makes the following assignment of errors which he avers occurred upon the trial of this cause, and to which he objected and excepted at the time, to-wit:

1. The court erred in not dismissing the third amended Bill in Equity for the reason that it seeks relief from the defendant, Walter J. Carey, upon the ground that the deed executed and delivered by John E. Humphreys to this defendant on August 6th, 1910 was a preference and that on the face of said bill it appears that said deed was executed and delivered more than four months prior to the filing of the petition in bankruptcy against said Humphreys, and said instrument is not such an instrument as is required to be recorded.

2. Said court erred in its decree in finding that said deed from Humphreys to Carey was invalid and that the complainant was therefore entitled to recover from said Walter J. Carey the value of said property for the reason that the evidence showed said deed was not a preference and was not a conveyance made for the purpose of hindering, delaying or defrauding said Humphreys' creditors.

3. The court erred in finding that the defendant, Harriet A. Humphreys was entitled to the value of her inchoate dower interest in said property and in ordering the amount thereof to be paid to her from the money found due from the defendant Carey to the complainant.

4. The court erred in finding that said Walter J. Carey had on or prior to the 6th day of August 1910 reasonable cause to believe that a transfer of the property to him would effect a preference.

5. The court erred in finding and decreeing that the transfer of the property from John E. Humphreys, Bankrupt, to the defendant, Walter J. Carey, was invalid for the reason that it does not appear from the evidence that said Walter J. Carey had reasonable cause to believe that at the time of the execution and delivery of the deed to him that the said John E. Humphreys was insolvent.

6. The court erred in entering a decree in behalf of the complainant against this defendant and in not entering a decree dismissing the bill for the reason that the evidence offered by the complainant does not sustain the allegations of the Third Amended Bill in Equity and does

not show that the conveyance which was made by John E. Humphreys to Walter J. Carey was a preference under the Bankruptcy Act.

7. The court erred in entering a decree on behalf of the complainant against this defendant and in not entering a decree dismissing the bill for the reason that the evidence shows affirmatively that the deed for the conveyance from John E. Humphreys to Walter J. Carey was executed and delivered more than four months prior to the filing of the petition in bankruptcy against said Humphreys and was not such an instrument as is required to be recorded.

8. The court erred in other respects apparent upon an inspection of the record.

Wherefore, this defendant Walter J. Carey, prays that the decree of the District Court may be reversed.

Morison R. Waite,
John R. Schindel,
Attorneys for Defendant, Walter J. Carey.

ORDER ALLOWING APPEAL.

(Entered by Judge Hollister).

This 29th day of January, 1914, came the defendant, Walter J. Carey, by his attorneys, and filed herein and presented in open court his petition for an appeal from the order and decree entered herein on the 23rd day of January, 1914, and likewise filed with his petition an assignment of the errors complained of and intended to be urged by him, and praying also that a transcript of the record, proceedings and papers upon which the order and decree herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Sixth Circuit, and that such other and further proceedings may be had as may be proper in the premises. On consideration whereof, the court does hereby in open court allow said appeal upon said Walter

J. Carey giving bond, according to law in the sum of Ten Thousand Dollars ($10,000.), which shall operate as a supersedeas bond, and upon the approval of said bond, said order and decree shall be superseded and all proceedings under and upon said order and decree shall be stayed and suspended.

BOND ON APPEAL.

(Filed January 29, 1914.)

Know all men by these presents, That we, Walter J. Carey as principal and Frank A. Zimmerman and Sophia Weiler, as sureties, are held and firmly bound unto E. Reeder Donohue, Trustee in bankruptcy for the creditors of John E. Humphreys, a bankrupt in the full and just sum of Ten Thousand Dollars ($10,000.00), to be paid to the said E. Reeder Donohue, trustee in bankruptcy for the creditors of John E. Humphreys, a bankrupt, certain attorneys, executors, administrators or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 29 day of January, in the year of our Lord one thousand nine hundred and fourteen.

Whereas, lately at a term of the District Court of the United States for the Southern District of Ohio, Western Division, in a suit depending in said Court, between E. Reeder Donohue, Trustee of the creditors of John E. Humphreys, a bankrupt, vs Walter J. Carey et al a decree was entered against the said Walter J. Carey in the sum of Fifty Six Hundred and Twenty five Dollars ($5625) and the said Walter J. Carey, having obtained an appeal and filed a copy thereof in the Clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said E. Reeder Donohue, Trustee in bankruptcy for the creditors of John E. Humphreys, a bankrupt and Harriett A. Humphreys, citing and ad-

monishing them to be and appear at a session of the United States Circuit Court of Appeals for the Sixth Circuit, to be holden at the City of Cincinnati in said Circuit, on the 28th day of February next.

Now, the condition of the above obligation is such, That if the said Walter J. Carey shall prosecute to effect, and answer all damages and cost if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

Walter J. Carey,
Frank A. Zimmerman,
Sophia Weiler.

Sealed and delivered in the presence of:
John R. Schindel.
Approved by:
Howard C. Hollister.

ORDER.

(Entered by Judge Hollister January 29, 1914.)

Upon application of the defendant, Walter J. Carey, the court directs that the testimony in this case be reproduced in the record on appeal in the exact words of the witnesses.

ORDER ENLARGING TIME FOR DOCKETING CASE AND FILING RECORD IN THE CIRCUIT COURT OF APPEALS.

(Entered by Judge Hollister January 29, 1914.)

For good cause shown, the time for docketing this cause in the Circuit Court of Appeals for the Sixth Judicial Circuit and filing the record therein is enlarged to fifty days and it is ordered that said cause may be docketed and said record may be filed at any time within fifty days from the date of the signing of the citation herein.

CITATION.

(Filed January 30, 1914.)

United States Circuit Court of Appeals
For the Sixth Circuit.

United States of America, Sixth Judicial Circuit. ss.

To E. Reeder Donohue, Trustee in Bankruptcy of John E. Humphreys, and Harriett A. Humphreys, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Sixth Circuit, to be holden at the City of Cincinnati, in said Circuit, within thirty days from the date hereof, pursuant to an Appeal, filed in the Clerk's office of the District Court of the United States for the Southern District of Ohio, wherein Walter J. Carey is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant as in the said Appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, this 29th day of January,

in the year of our Lord one thousand nine hundred and fourteen, and of the Independence of the United States of America the one hundred and thirty-eighth.

Howard C. Hollister,
Judge of the District Court of the United States for the Southern District of Ohio.

State of Ohio, County of Hamilton, ss:

On this 30th day of January, A. D. 1914, personally appeared before me, a Notary Public in and for said County, Frank Cist and made oath that he delivered a copy of within citation to E. Reeder Donohue, Trustee in Bankruptcy of John E. Humphreys in the presence of Willis Durrell his attorney.

Frank Cist.

Sworn to and subscribed before me this 30th day of January, 1914.

Paul Dewald,
(Seal.) Notary Public, Hamilton County, Ohio.

Service of the within citation is hereby acknowledged this 30th day of January, 1913.

David Davis,
Attorney for Harriett A. Humphreys.

PRAECIPE FOR RECORD.

(Filed February 9, 1914.)

Hon. B. E. Dilley, Clerk, United States District Court, Southern District of Ohio, Western Division.

The defendant, Walter J. Carey, having been allowed an appeal to the United States Circuit Court of Appeals for the Sixth Circuit, hereby indicates the portions of the record in this court to be incorporated into the record on such appeal, to-wit:

Bill of Complaint,
Answer of Harriett A. Humphreys,
Verdict,

Praecipe for Record

Third Amended Bill of Complaint,

Answer of Walter J. Carey to Third Amended Bill of Complaint,

Statement of evidence as contained in so-called Bill of Exceptions in exact words of the witnesses,

Final Decree,

Mandate from United States Circuit Court of Appeals for the Sixth Circuit,

Opinion of the United States Circuit Court of Appeals, Sixth Circuit,

Order allowing complainant to file Third Amended Bill of Complaint and Walter J. Carey to Answer,

Order and Decree re-entering former final decree,

Decree re-entered Jan. 23, 1914,

Petition for appeal filed Jan. 29, 1914,

Assignment of errors filed Jan. 29, 1914,

Order allowing appeal,

Bond on Appeal,

Order directing evidence to be reproduced in record in the words of the witnesses,

Order extending time for filing record,

Citations and service thereof,

Clerk's Certificate.

Morison R. Waite,
John R. Schindel,
Solicitors for Walter J. Carey.

Service of a copy of the above Praecipe is hereby acknowledged, this 9th day of February, 1914.

.....

Solicitors for E. Reeder Donohue, Trustee.
David Davis,
Solicitors for Harriett A. Humphreys.

State of Ohio, Hamilton County, ss:

Frank Cist, being first duly sworn, says that he is an attorney at law associated with the firm of Waite & Schindel and that on the 9th day of February he served a true copy of the above Praecipe for Record personally upon E. Reeder Donohue, Trustee in Bankruptcy for John E. Humphreys, Bankrupt, and that upon request, he refused to acknowledge service of the same.

Frank Cist.

Sworn to before me and subscribed in my presence, this 9th day of February, 1914.

(Seal.) Paul Dewald,
Notary Public, Hamilton County, Ohio.

PRAECIPE FOR ADDITIONAL RECORD.

(Filed February 20, 1914.)

Hon. B. E. Dilley, Clerk, United States District Court, Southern District of Ohio, Western Division.

The Plaintiff, E. Reeder Donohue, Trustee in Bankruptcy of John E. Humphreys, hereby indicates the portion of the record in this Court in addition to such portions, as have been indicated by the defendant, to be incorporated into the record on appeal, to-wit:

The Second Amended Bill in Equity.

W. G. Durrell,
David Davis,
Solicitors for E. Reeder Donohue, Trustee.

Service of a copy of the above Praecipe is hereby acknowledged this 20th day of February, 1914.

M. R. Waite,
J. R. Schindel,
Solicitors for Walter J. Carey.

CERTIFICATE OF CLERK.

E. REEDER DONOHUE, Trustee in Bankruptcy of John E. Humphreys, Bankrupt,

No. 2017. vs.

WALTER J. CAREY et al.

The United States of America, Southern District of Ohio, Western Division, ss:

I, B. E. Dilley, Clerk of the District Court of the United States, within and for the District and Division aforesaid, do hereby certify that the foregoing pages, numbered from 1 to 163, inclusive, contain true and correct copies of those portions of the record and proceedings in the above entitled cause indicated in the Praecipe filed herein on February 9, 1914, a copy of which will be found on page 161 hereof, and in the Praecipe filed herein on February 20, 1914, a copy of which will be found on page 163 hereof.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at the City of Cincinnati, Ohio, this 14th day of March, A. D. 1914.

(Seal.)

B. E. Dilley,
Clerk,
By Harry F. Rabe,
Deputy.

And afterwards towit on March 18, 1914, præcipe for appearance of counsel was filed as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

#2621.

WALTER J. CAREY, Appellant,
v.
E. REEDER DONOHUE, Trustee in Bankruptcy of John E. Humphreys and Harriet A. Humphreys, Appellees.

Appearance.

Frank O. Loveland, Clerk of said Court:

Please enter *my* appearance as counsel for the Appellant.

MORRISON R. WAITE.
JOHN R. SCHINDEL.

And afterwards towit on April 28, 1914, a stipulation was filed as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

#2621.

WALTER J. CAREY, Appellant,
v.
E. REEDER DONOHUE, Trustee in Bankruptcy of John E. Humphreys and Harriet A. Humphreys, Appellees.

Stipulation.

Whereas, this cause is now pending on appeal in this court from a decree of the District Court of the United States for the Southern District of Ohio, Western Division, entered pursuant to the mandate of this court, dated the 16th day of January, 1914, and

Whereas, the record is the same as that upon which the former appeal was decided with the exception that the pleadings have been amended in accordance with said mandate.

It is hereby stipulated by and between the parties hereto that this cause may with the court's consent be submitted without oral argument, as required by Rule 23, which is expressly waived, and without filing briefs, which are required by Rule 20.

JOHN R. SCHINDEL,
MORRISON R. WAITE,
Counsel for Appellant Walter J. Carey.
DAN'L LAWS,
Counsel for Harriet A. Humphreys.
W. S. DURRELL,
Counsel for E. Reeder Donohue, Trustee.

And afterwards towit on May 12, 1914, an order of submission was filed as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

#2621.

WALTER J. CAREY
v.
E. REEDER DONOHUE, Trustee.

Order of Submission.

Pursuant to stipulation of counsel this cause is submitted without oral argument or briefs of counsel.

And afterwards towit on May 15, 1914, a decree was entered in said cause as follows:

United States Circuit Court of Appe[illegible] for the Sixth Circuit.

#2621.

WALTER J. CAREY
v.
E. REEDER DONOHUE, Trustee in Bankruptcy of John E. Humphreys and Harriet A. Humphreys.

Appeal from the District Court of the United States for the Southern District of Ohio.

Decree.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Ohio.

On Consideration Whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause be and the same is hereby affirmed with costs.

And on the same day towit, May 15, 1914, an opinion was filed as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

#2621.

WALTER J. CAREY, Appellant,
v.
E. REEDER DONOHUE, Trustee, et al., Appellees.

Appeal from the District Court of the United States for the Southern District of Ohio.

Submitted May 12, 1914; Decided May 15, 1914.

Opinion.

Per Curiam:

This is an appeal from the decree entered below pursuant to our mandate (Carey v. Donohue, 209 Fed. 328). It is not clear whether this appeal should be dismissed under the rule of Asper Co. v. Billings, 150 U. S. 31, 37; Great Northern Co. v. Western Union Co. (C. C. A. 8) 174 Fed. 321, 323; and Singer Co. v. Adams (C. C. A. 5) 185 Fed. 768; or be affirmed, and so serve as a basis for an appeal to be considered in connection with an appeal from our former decree, as was done with the apparent approval of the Supreme Court in Merrill v. National Bank, 173 U. S. 131, 134.

As [illegible]r proceedings should be shaped to facilitate effective review by th[illegible] Supreme Court, it seems the safer course to affirm, and it will be ordered accordingly (See also Brown v. Alton Walter Co. 222 U. S. 325; Metropolitan Co. v. Kaw, 223 U. S., 519; Union Trust Co. v. Westhus, 228 U. S., 519, 522).

And afterwards towit on June 9, 1914, a petition for appeal was filed as follows:

United [illegible]tes Circuit Court of Appeals for the Sixth Circuit.

#2621.

WALTER J. CAREY, Appellant,
v.
E. REEDER DONOHUE, Trustee in Bankruptcy of John E. Humphreys and Harriet A. Humphreys, Appellees.

Petition for Appeal.

The above named, Walter J. Carey, Appellant, respectfully shows that the above entitled cause is now pending in the United States Circuit Court of Appeals for the Sixth Circuit, and that a judgment and decree has been rendered therein on the 15th day of May, 1914, affirming the judgment and decree of the District Court of the United States for the Southern District of Ohio, Western Division; that on the 2nd day of December, 1913, a judgment and decree was

rendered in this cause by the said Circuit Court of Appeals reversing a decree and judgment of the said District Court and remanding the cause to said Court with directions to amend the Bill of Complaint and re-enter the same decree; that the matter in controversy herein exceeds $1,000 in addition to the costs, and that this cause is one in which the United States Circuit Court of Appeals for the Sixth Circuit has not final jurisdiction, and it is therefore a proper cause to be reviewed by the Supreme Court of the United States on appeal.

Wherefore, the said Walter J. Carey, Appellant, conceiving himself aggrieved by said judgments and decrees, prays that an appeal be allowed him in the above entitled cause directing the Clerk of the United States Circuit Court of Appeals for the Sixth Circuit to send the record and proceedings in said cause with all things concerning the same to the Supreme Court of the United States in order that the errors complained of in the assignment of errors herewith filed by said Appellant, may be reviewed, and if error be found, corrected according to the laws and customs of the United States, and that upon said Appellant giving bond as required by law, said decree and judgment of May 15, 1914, be superseded and all proceedings in this court and in the District Court of the United States for the Southern District of Ohio be suspended and stayed.

MORRISON R. WAITE.
JOHN R. SCHINDEL,
Attorneys for Appellant.

The appeal as prayed for is allowed and bond fixed at $10,000.00 to operate as a supersedeas, if given to my satisfaction on or before the 13th day of June, 1914.

J. W. WARRINGTON,
Circuit Judge, Presiding Jvdge United States Circuit Court of Appeals for the Sixth Circuit.

Cincinnati, Ohio, June —, 1914.

And on the same day towit June 9, 1914, an assignment of errors was filed as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

#2621.

WALTER J. CAREY, Appellant,
v.
E. REEDER DONOHUE, Trustee in Bankruptcy of John E. Humphreys and Harriet A. Humphreys, Appellees.

Assignment of Errors.

The appellant, Walter J. Carey, in connection with the petition for appeal herein, says that the judgments and decrees in this cause

are erroneous and presents and files herewith the following assignment of errors, as to which matters and things he says that the said judgments and decrees entered herein on the 15th day of May, 1914, and the 2nd day of December, 1913, are erroneous, towit:

The United States Circuit Court of Appeals for the Sixth Circuit erred in not dismissing the Bill of Complaint.

First. Because said bill seeks relief from the defendant, Walter J. Carey, upon the ground that the deed executed and delivered by John E. Humphreys to said Carey on August 6th, 1910, was a preference and on the face of said bill it appears that said deed was executed and delivered more than four months prior to the filing of the petition in bankruptcy against said Humphreys, and said instrument is not such an instrument as is required to be recorded.

Second. Because the District Court of the United States for the Southern District of Ohio, Western Division, erred in its decree in finding that said deed from Humphreys to Carey was invalid and that the complainant is therefore entitled to recover from said Walter J. Carey the value of said property for the reason that the evidence showed that said deed was not a preference and was not a conveyance made for the purpose of delaying, hindering or defrauding said Humphreys' creditors.

Third. Because said District Court erred in finding that the defendant, Harriet A. Humphreys was entitled to the value of her inchoate dower interest in said property and in ordering the amount thereof to be paid to her from the money found due from the defendant Carey to the complainant, E. Reeder Donohue, Trustee.

Fourth. Because said District Court erred in finding that said Walter J. Carey had on or prior to the 6th day of August, 1910, reasonable cause to believe that a transfer of the property to him would effect a preference.

Fifth. Because said District Court erred in finding and decreeing that the transfer of the property from John E. Humphreys, Bankrupt, to the Appellant, Walter J. Carey, was invalid for the reason that it does not appear from the evidence that the said Walter J. Carey had reasonable cause to believe that at the time of the execution and delivery of the deed to him, said John E. Humphreys was insolvent.

Sixth. Because said District Court erred in entering a decree in behalf of the complainant against this appellant and not entering a decree dismissing the bill for the reason that the evidence offered by the complainant does not sustain the allegations of the third amended bill in Equity and does not show that the conveyance which was made by John E. Humphreys to Walter J. Carey was a preference under the Bankrupt Act.

Seventh. Because the District Court erred in entering a decree on behalf of the complainant against this appellant and in not entering a decree dismissing the bill for the reason that the evidence shows affirmatively that the deed for the conveyance from John E. Humphreys to Walter J. Carey was executed and delivered more than four months prior to the filing of the petition in bankruptcy against said Humphreys and was not such an instrument as is required to be recorded.

Eighth. Because said District Court erred in other respects apparent upon an inspection of the record.

Wherefore, this appellant prays that said judgments and decrees of the Circuit Court of Appeals for the Sixth Circuit may be reversed and that the appellant may have an adjudication and decree in his favor as herein specified.

MORRISON R. WAITE,
JOHN R. SCHINDEL,
Counsel for Appellant.

And on the same day a bond on appeal was filed as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

Bond on Appeal from the Circuit Court of Appeals of the Supreme Court of the United States.

Know all men by these presents, That we, Walter J. Carey, as principal, and Frank A. Zimmerman and Robert Hesterberg as sureties, are hereby held and firmly bound unto E. Reeder Donohue, Trustee in Bankruptcy for the creditors of John E. Humphreys, a bankrupt, in the full and just sum of $10,000.00, to be paid to the said E. Reeder Donohue, Trustee in Bankruptcy for the creditors of John E. Humphreys, a bankrupt, his certain attorneys, executors, administrators, jointly and severally by these presents.

Sealed with our seals and dated this 9th day of June in the year of our Lord, one thousand nine hundred and fourteen.

Whereas, lately at a term of the United States Circuit Court of Appeals for the Sixth Circuit, in a suit depending in said court between Walter J. Carey, Appellant, and E. Reeder Donohue, Trustee in Bankruptcy for the creditors of John E. Humphreys, a bankrupt, and Harriet A. Humphreys, Appellees, a judgment and decree was entered affirming the judgment and decree of the District Court of the United States for the Southern District of Ohio, against said Walter J. Carey in the sum of $5625, and the said Walter J. Carey, having obtained an appeal to the Supreme Court of the United States and filed a copy thereof in the Clerk's Office of said court to reverse the decree rendered and entered in said cause in the United States Circuit Court of Appeals for the Sixth Circuit on the 15th day of May, 1914, and the decree entered by said court on the 2nd day of December, 1913, and a citation directing the said E. Reeder Donohue, Trustee in Bankruptcy for the creditors of John E. Humphreys, Bankrupt, and Harriet A. Humphreys, citing and admonishing them to appear at a session of the Supreme Court of the United States to be held at the City of Washington in the District of Columbia, within thirty days from the date of said citation.

Now, the condition of the above obligation is such that, if the said Walter J. Carey shall prosecute said appeal to effect, and answer all damages and costs if he fail to make said appeal good; then the

above obligation shall be void; otherwise to remain in full force and virtue.

WALTER J. CAREY.
FRANK A. ZIMMERMAN.
ROBERT HESTERBERG.

Signed in the presence —
JOHN R. SCHINDEL.

STATE OF OHIO,
Hamilton County, ss:

Frank A. Zimmerman, being first duly sworn, says he is one of the sureties on the foregoing bond; that he is a resident and freeholder in the County of Hamilton, State of Ohio, and is worth the sum of $10,000.00 over and above all his just debts and liabilities, exclusive of property exempt from execution.

FRANK A. ZIMMERMAN.

Sworn to before me and subscribed in my presence this 9th day of June, 1914.

[SEAL.]

FRANK CIST,
Notary Public, Hamilton County, Ohio.

STATE OF OHIO,
Hamilton County, ss:

Robert Hesterberg, being first duly sworn, says that he is one of the sureties on the foregoing bond; that he is a resident and a freeholder in the County of Hamilton, State of Ohio, and is worth the sum of $20,000.00 over and above all his just debts and liabilities, exclusive of property exempt from execution.

ROBERT HESTERBERG.

Sworn to before me and subscribed in my presence this 9th day of June, 1914.

[SEAL.]

FRANK CIST,
Notary Public, Hamilton County, Ohio.

The foregoing bond is approved this 9th day of June A. D. 1914.

J. W. WARRINGTON,
Circuit Judge, Presiding Judge United States Circuit Court of Appeals for the Sixth Circuit.

United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA,
Sixth Judicial Circuit, ss:

To E. Reeder Donohue, Trustee in Bankruptcy of John E. Humphreys and Harriett A. Humphreys, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden at the

City of Washington in the District of Columbia, within thirty days from the date hereof, pursuant to an appeal allowed and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Sixth Circuit, wherein Walter J. Carey is Appellant, and E. Reeder Donohue, Trustee in Bankruptcy of John E. Humphreys, and Harriett A. Humphreys are Appellees, to show cause, if any there be, why the decree rendered against the said appellant as in the said Appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John W. Warrington, Circuit Judge, Judge United States Circuit Court of Appeals for the Sixth Circuit, this 9th day of June, in the year of our Lord one thousand nine hundred and fourteen, and of the Independence of the United States of America the one hundred and thirty-eighth.

J. W. WARRINGTON,
Circuit Judge, Judge United States Circuit Court of Appeals for the Sixth Circuit.

Service of the within citation is hereby acknowledged, this 9th day of June, 1914.

E. REEDER DONOHUE,
Trustee in Bankruptcy of John E. Humphreys.
DAVID DAVIS,
Attorney for Harriett A. Humphreys.

United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of The record and proceedings and original citation in the case of Walter J. Carey vs. E. Reeder Donohue, Trustee, etc., No. 2621, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said Court, at the City of Cincinnati, Ohio, this 11th day of June A. D. 1914.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

Endorsed on cover: File No. 24,276. U. S. Circuit Court Appeals, 6th Circuit. Term No. 532. Walter J. Carey, appellant, vs. E. Reeder Donohue, trustee in bankruptcy of John E. Humphreys and Harriett A. Humphreys. Filed June 17th, 1914. File No. 24,276.

No. 179

OCTOBER TERM, 1914

Supreme Court of the United States

WALTER J. CAREY,

Appellant,

vs.

E. REEDER DONOHUE, Trustee in Bankruptcy of JOHN E. HUMPHREYS and HARRIET A. HUMPHREYS,

Appellee.

Brief for Appellant

MORISON R. WAITE,
JOHN RANDOLPH SCHINDEL,
Counsel for Appellant.

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AUTHORITIES.

ADDITIONAL AUTHORITIES.

In re T. H. Bunch Commission Co., 225 Fed. Rep. 243, 250.

The reports of the Judiciary Committee submitting the amendments of 1910 limits required recording to that necessary under State law to make the lien valid as against levying creditors.

No. 532.

OCTOBER TERM, 1914

Supreme Court of the United States

WALTER J. CAREY,

Appellant,

vs.

E. REEDER DONOHUE, Trustee in Bankruptcy of JOHN E. HUMPHREYS and HARRIET A. HUMPHREYS,

Appellees.

Brief for Appellant

MORISON R. WAITE,
JOHN RANDOLPH SCHINDEL,
Counsel for Appellant

No. 532.

OCTOBER TERM, 1914

Supreme Court of the United States

WALTER J. CAREY,

Appellant,

vs.

E. REEDER DONOHUE, Trustee in Bankruptcy of JOHN E. HUMPHREYS and HARRIET A. HUMPHREYS,.

Appellees.

Brief for Appellant

This cause comes into this court on an appeal from decrees rendered by the Circuit Court of Appeals for the Sixth Circuit, affirming decrees rendered in the District Court of the United States for the Southern District of Ohio, Western Division, awarding to the Trustee in Bankruptcy, plaintiff below, the value of property held to have been transferred by the bankrupt as a preference. The appeal to this court was taken prior to the enactment of the act of 1915, making the judgments of the Circuit Courts of Appeal final. The cause involves the proper construction of the four months' limitation provision in Sections 60a and 60b of the Bankruptcy Act as amended June 25, 1910, for the recovery of a preference when the instrument

of transfer made more than four months before the filing of the petition in bankruptcy was valid against general and lien creditors without record, but was in fact recorded within the four months period. The decisions of the Circuit Courts of Appeal of several circuits are in conflict on the proper construction of these clauses in the Bankruptcy Act.

Suit was brought in the District Court of the United States, Southern District of Ohio, Western Division, February 28, 1911 (Rec., p. 1), by the filing of a bill in equity by E. Reeder Donohue, Trustee in Bankruptcy of John E. Humphreys, the principal appellee here, against Walter J. Carey, the appellant, and others, among whom was Harriet A. Humphreys, the wife of the bankrupt, also an appellee. The bill alleged the filing of a petition in involuntary bankruptcy against John E. Humphreys in said court on January 3, 1911, an adjudication of bankruptcy thereon January 24, 1911, and the appointment of Donohue as Trustee February 15, 1911; that prior to August 6, 1910, John E. Humphreys was the owner of the property in Norwood, Ohio, in question, and was in possession thereof until he absconded on or about December 20, 1910, at which time possession was retained by Sophia Pierce, a sister-in-law and member of the family of the bankrupt, who was left there by said Humphreys, and that subsequently, pursuant to directions of the District Judge said Donohue, at that time Receiver in Bankruptcy, had taken possession of said real estate and rented same to the defendants, Nellie K. Canty and Jenny Canty; that on or about August 6, 1910, said Humphreys executed and delivered a deed for said real estate for the stated consideration of one dollar, which deed was left for record with the Recorder of Hamilton County, Ohio, on November 15, 1910, and was recorded, but that said

Humphreys at no time delivered possession of said real estate to said Carey. It was further alleged:

"Said deed was given by said Humphreys to said Carey without valid consideration being paid therefor by said Carey, and was within four months prior to the petition and adjudication of bankruptcy against said Humphreys. Said deed is void for want of any legal consideration; if there was any consideration therefor, said consideration was an antecedent debt and giving said deed in payment of an antecedent debt, when insolvent, was an act of bankruptcy, preferring a creditor within four months prior to the adjudication of bankruptcy."

The bill further alleged the execution and delivery of a deed by said Carey December 28, 1910, to said defendants, Nellie K. Canty and Jenny Canty for the consideration of one dollar and good and valuable considerations, which was left for record January 3, 1911, and recorded; that on December 31, 1910, said defendants, Nellie K. Canty and Jenny Canty, executed and delivered to Walter J. Carey a deed for a piece of real estate in Madisonville for the consideration of one dollar and good and valuable considerations, which deed was left for record on January 3, 1911, and recorded; that in none of these deeds was the actual consideration stated; that Nellie K. Canty was and is employed in the office of Carey in the confidential relation to Carey as stenographer. It was charged that the deed from Humphreys to Canty was void against the plaintiff and it was admitted that Harriet A. Humphreys was entitled to have her inchoate dower allowed her as against the plaintiff. Prayer was that the deed from Humphreys to Carey and the deed from Carey to Nellie K. and Jenny Canty be set aside and held for naught, and the title to the real estate be found to be in the trustee in bankruptcy, or if title be found good in

Nellie K. and Jenny Canty, that Carey be declared a trustee and required to account for the fair market value of the real estate.

At the conclusion of the hearing of the evidence by the court, the plaintiff was permitted to file a second amended bill in equity, which was done May 29, 1912, and is found at page 137 of the record. The amendment consists in omitting the allegation that the deed from Carey to Nellie K. and Jenny Canty was void, and in the substitution for that portion of the bill above, quoted *verbatim*, the following:

"Your petitioner further says that said alleged deed was not intended at the time of its delivery by Humphreys to Carey to be an absolute transfer, but was to be held as security only, until Humphreys paid certain monies to Carey, in which case said alleged deed was to be destroyed or a re-transfer made, or if said alleged deed operated as a deed, it was given by said Humphreys to said Carey without valid consideration being paid therefor by said Carey, and was recorded within four months prior to the petition and adjudication of bankruptcy against said Humphreys. Said alleged deed is void for want of any legal considerations; if there was any consideration therefor, said consideration was an antecedent debt, and giving deed in payment of an antecedent debt, when insolvent, was an act of bankruptcy, preferring a creditor within four months prior to the adjudication of bankruptcy."

On this bill and the evidence the District Court entered a decree May 29, 1912. (Rec., p. 139.) The court found Humphreys was, prior to August 6, 1910, the owner of the property in question and in possession thereof until the court ordered same delivered to the defendants, Nellie K. and Jenny Canty, who paid rent

on the same to the plaintiff under an order of court; that on August 6, 1910, Humphreys executed and delivered to Carey a certain paper writing purporting to be a deed of said real estate for the stated consideration of one dollar, which was left for record November 15, 1910, and recorded within four months before the adjudication of Humphreys a bankrupt, and the court found that Humphreys was insolvent on August 6, 1910, and that Carey had then reasonable cause to believe that such a transfer to him, if made, would effect a preference being given in payment of an antecedent debt. The court found that said deed from said Humphreys to said Carey, whether recorded as a transfer of title or as security for debt, is invalid. The court further found that Nellie K. Canty and Jenny Canty were innocent purchasers of the property, that the conveyance from Carey to them had placed the property beyond the reach of the court, that the plaintiff was entitled to a judgment against Carey for the value of the property, that Harriet A. Humphreys was entitled to the value of her inchoate dower interest therein, and that the value of the property had been found by a jury to be $5,625.00. It was adjudged and decreed that the title to the property was in Nellie K. Canty and Jenny Canty; that the plaintiff recover from Carey the value as found by the jury, with interest and costs, and that out of the money so received plaintiff pay to Harriet A. Humphreys the value of her inchoate right of dower, $277.87. And the title of Nellie K. Canty and Jenny Canty was quieted as against any and all claims of said Harriet A. Humphreys.

From this decree an appeal was taken by Carey to the Circuit Court of Appeals for the Sixth Circuit, hereafter referred to as the first appeal. That court, in its opin-

ion rendered December 2, 1913, filed January 16, 1914 (Rec., p. 143), denied all the assignments of error save only that the amended bill was insufficient to sustain the decree on the ground upon which it was placed, to-wit, that the deed from Humphreys to Carey was a voidable preference. The court held, however (Rec., p. 144), that "the appellant appears to have understood the trustee to charge the execution of a preference; for, after denying knowledge of insolvency of the bankrupt, appellant averred that he 'had no reasonable cause to believe that he (the bankrupt) was insolvent, and did not know and had no reasonable cause to believe that said conveyance from said John E. Humphreys to Walter J. Carey would create a preference over any other of the creditors of the said John E. Humphreys.' * * * Besides, the case was tried upon the theory of preference, and this was also the basis of the decree." It was, therefore, provided that the case be reversed and remanded "for the purposes only of further and appropriate amendment to the bill and re-entry of the decree." (Rec., pp. 144, 145.)

The mandate reversing and remanding, with directions to take further proceedings not inconsistent with the opinion of the court, was filed January 16, 1914. (Rec., p. 142.)

Accordingly, the District Judge on January 23, 1914, ordered to be filed the third amended bill and the amended answer thereto of the defendant, Walter J. Carey (Rec., p. 152), and thereupon re-entered on the same date the same decree as had been previously rendered May 29, 1912. (Rec., p. 153.)

The third amended bill so permitted to be filed and the answer thereto are found at Record, pages 6 and 9.

The change in the bill is found at page 8, by the addition of this paragraph:

"Your petitioner says that at the time said deed was delivered by said John E. Humphreys, to said defendant Walter J. Carey, and at the time said defendant Walter J. Carey caused said deed to be recorded; said John E. Humphreys was insolvent, and said Walter J. Carey had reasonable cause to believe that said John E. Humphreys was insolvent, that said deed was given as a preference and was so intended and said defendant Walter J. Carey had reasonable cause to believe that at the time said deed was delivered and at the time it was recorded, that the transfer of the property so conveyed to him by said deed and the enforcement of said transfer was intended to give a preference forbidden by law and would give such preference to said Walter J. Carey."

Carey, by his answer, admits the qualification of the plaintiff, that Humphreys owned the real estate prior to August 6, 1910, and that prior to that date Harriet A. Humphreys had an inchoate dower interest; that Humphreys absconded on or about December 20, 1910; that Humphreys executed and delivered a deed to Carey for one dollar to the real estate in question August 6, 1910; that it was left for record November 15, 1910, and recorded; that on or about December 28, 1910, he executed and delivered a deed to Nellie K. and Jenny Canty and the recording of that deed, and that they deeded to him a piece of property in Madisonville, and denies all the other allegations of the petition, specifically averring that Harriet A. Humphreys released by the deed dated August 6, 1910, her right and expectancy of dower, in connection with the denial that she is entitled to any inchoate dower in said premises. Carey in his answer further avers that there could be no recovery from him of the property described in the deed, or the value there-

of, for the reason that it was executed and delivered more than four months prior to the filing of the petition in bankruptcy, which petition was filed January 3, 1911, and that said deed was not required to be recorded within the meaning of the Bankruptcy Act as amended.

From that decree of January 23, 1914, Carey again appealed January 29, 1914 (Rec., p. 155), which appeal was allowed the same date. (Rec., p. 157.) On this second appeal the Circuit Court of Appeals affirmed the judgment below May 15, 1914. (Rec., p. 167.)

The appellant Carey has appealed to this court from both decrees of the Circuit Court of Appeals, that rendered on the fifteenth day of May, 1914, and that on the second day of December 1913, avoiding any question as to which was the final decree.

ASSIGNMENTS OF ERROR.

The assignments of error to this court are found at page 168 of the record. While it was originally intended to argue all of the assignments of error for the consideration of this court, we have concluded that some may, after all, involve the consideration of the weight of the evidence, a task which this court can not be expected to undertake, and we will therefore only urge the first, third and seventh of the assignments. They present two questions for the decision of this court:

(1) That there was error in the decree because the plaintiff below was barred from a recovery by reason of the fact that the deed from the bankrupt Humphreys to Walter J. Carey was executed and delivered more than four months prior to the filing of the petition in bankruptcy against Humphreys and was not such an instrument as is required to be recorded.

(2) That Harriet A. Humphreys was not entitled to the value of her inchoate dower interest, and it was error to so decree.

The second of these propositions, relating to Mrs. Humphreys' right to the value of her dower, and raised by the third assignment of error, stands or falls with the first, and can hardly be considered a separate question. It is true that Mrs. Humphreys, by her answer, (Rec., p. 4), denied that she executed the deed to Carey, but that claim was not asserted at the trial. She did not testify at all, and no witness testified that her signature to the deed was a forgery. The court quieted against her the title of Carey's grantees, Nellie K. and Jenny Canty. If, therefore, the deed was not avoidable as a preference, Mrs. Humphreys' rights under the decree should fall with those of the Trustee in Bankruptcy.

The single proposition of law for consideration is this:

There could be no recovery because the deed was made and delivered more than four months prior to the filing of the petition in bankruptcy, and was not "required" to be recorded within the meaning of the Bankruptcy Act.

It is admitted by the pleadings and is undisputed that the deed in question from the bankrupt Humphreys to the appellant Carey was executed and delivered August 6, 1910, and it was found by the court, and we believe not now disputed, that it was given for a valid existing indebtedness. Neither is there a dispute but what it was recorded November 15, 1910, which was within four months prior to the filing of the petition in bankruptcy, January 3, 1911.

No other grounds were found by the court for the relief against Carey than that the deed from Humphreys

to him was a preference, and in order to sustain the decree the Circuit Court of Appeals found it necessary to send the case back that proper amendment might be made to the bill to sustain the recovery of a preference. It is proper, therefore, to ignore all the other claims made in the bill and confine the consideration of this case solely to the question as to whether or not a recoverable preference has been made out.

In Ohio the provision of the statute in reference to the recording of deeds is found in General Code, Sec. 8543, formerly Revised Statutes, Sec. 4134. The preceding sections refer to the recording of mortgages and powers of attorney. Sec. 8543 reads:

"All other deeds and instruments of writing for the conveyance or encumbrance of lands, tenements or hereditaments executed agreeably to the provisions of this chapter shall be recorded in the office of the recorder of the county in which the premises are situated, and until so recorded or filed for record, they shall be deemed fraudulent so far as relates to a subsequent *bona fide* purchaser having, at the time of the purchase, no knowledge of the existence of such former deed or instrument."

Under this section of the statute a deed is good, although unrecorded, against all except *bona fide* purchasers without notice.

Irvin's Lessee v. *Smith*, 17 Ohio, 226.
Wright v. *Franklin Bank*, 59 O. S. 80.

The sixth syllabus of the last cited case reads:

"As against subsequent *bona fide* purchasers without notice a deed of conveyance of lands duly executed must be recorded as provided in Sec. 4134, Revised Statutes, but such record is not required as against other parties."

At page 93 of that case the court says:

"Mortgages so executed, whether conveying an estate in real property or only an interest therein, take effect from the time of delivery to the recorder, and deeds so executed conveying an estate or only an interest therein, that is, an equity, take effect from the delivery except as against subsequent *bona fide* purchasers without notice and as against such the deed must also be recorded."

It was held in that case that the rights of a grantee in an unrecorded deed were superior to those of a judgment creditor who levied subsequent to the delivery of the deed.

The same principle applies where the deed is given as security only, and in equity would be treated as a mortgage.

Kemper v. *Campbell*, 44 O. St. 210.

In that case it was held that a deed unrecorded, given as security only, and in equity a mortgage, conferred on the grantee therein rights superior to an assignee for the benefit of creditors.

An assignee for the benefit of creditors has always stood in Ohio in the favorable position now accorded a trustee in bankruptcy by the amendment of 1910, that is, of a judgment creditor having a lien and the courts of Ohio have held that the rights of creditors could as effectually be asserted through an assignee for the benefit of creditors as by judgment and execution.

Hanes v. *Tiffany*, 25 O. St. 549.

In ejectment a party may make title under a deed that never was recorded.

Blackburn v. *Blackburn*, 8 Ohio, 81.

It was suggested but not decided by Judge Warrington, in his opinion for the Circuit Court of Appeals on the first appeal below (Rec., p. 149), "that *Wright* v. *Bank*, *supra* (59 O. S. 80), might not be applicable to a case of preference if tested under and according to the Ohio statutes alone. For Secs. 11104 and 11105 of the Ohio Statutes (5 Ann. Gen. Code, 449, 460), denounce preferences under stated conditions. * * *" The answer to the suggestion would no doubt have occurred to the learned judge had he pursued the subject further, that in proceedings under those statutes the matter of recording is one of indifference. A preference under the conditions stated in those statutes may be set aside as therein provided whether the transfer be recorded or not. It was neither alleged nor claimed that the deed from Humphreys to Carey was a preference subject to the remedies provided in that statute. An intent to prefer on the part of the debtor and actual knowledge on the part of the creditor of the fraudulent intent of the debtor are essential for relief thereunder, and those elements have never been suggested in this case.

Under the Bankruptcy Law a preference has different attributes, depending upon the relief or remedy sought because of the preference. As constituting an act of bankruptcy, it is defined as follows, Sec. 3a:

"Acts of bankruptcy by a person shall consist of his having * * * or (2) transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors; or (3) suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before sale or final disposition of any property affected by such preference vacated or discharged such preference."

No showing of intention on the part of the bankrupt, or knowledge or cause for belief on the part of the creditor is requisite under this section.

By Sec. 3b it is provided:

"A petition may be filed against a person who is insolvent and who has committed an act of bankruptcy within four months after the commission of such act. Such time shall not expire until four months after (1) the date of the recording or registering of the transfer or assignment when the act consists in having made a transfer of any of his property with intent to hinder, delay, or defraud his creditors or for the purpose of giving a preference as hereinbefore provided, or a general assignment for the benefit of his creditors, if by law such recording or registering is *required or permitted*, or, if it is not, from the date when the beneficiary takes notorious, exclusive, or continuous possession of the property unless the petitioning creditors have received actual notice of such transfer or assignment."

Sec. 60a defines the acts of the bankrupt constituting the giving of a preference. Sec. 60b defines the acts of the recipient of a preference operating as in Sec. 60a, necessary for the recovery of such preference from the recipient. We quote Sec. 60a as amended February 5, 1903, and Sec. 60b as amended June 25, 1910:

"a. A person shall be deemed to have given a preference if, being insolvent, he has, within four months before the filing of the petition, or after the filing of the petition and before the adjudication, procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class. Where the preference consists in a transfer, such period of four

months shall not expire until four months after the date of the recording or registering of the transfer, if by law such recording or registering is required.

"b. If a bankrupt shall have procured or suffered a judgment to be entered against him in favor of any person or have made a transfer of any of his property, and if, at the time of the transfer, or of the entry of the judgment, or of the recording or registering of the transfer if by law recording or registering thereof is required, and being within four months before the filing of the petition in bankruptcy or after the filing thereof, and before the adjudication, the bankrupt be insolvent and the judgment or transfer then operate as a preference, and the person receiving it or to be benefited thereby, or his agent acting therein, shall then have reasonable cause to believe that the enforcement of such judgment or transfer would effect a preference, it shall be voidable by the trustee and he may recover the property or its value from such person. And for the purpose of such recovery any court of bankruptcy, as hereinbefore defined, and any state court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction."

It will be seen that not only the essential elements of a preference differ, but also that the four months period of limitation operate differently, in the different provisions of the act. The four months period is a limitation against the filing of a petition to secure an adjudication in bankruptcy from the date of the recording or registering of the transfer, "if by law such recording or registering is required or permitted, or, if it is not, from the date when the beneficiary takes notorious, exclusive or continuous possession of the property, unless the petitioning creditors have received actual notice of such transfer or assignment." (Sec. 3b.)

In Secs. 60a and 60b, where the act treats of the recovery of preferences from the recipient, the four months run from the actual date of the transfer, except only in the case of transfers, the recording or registering of which is "required," and as to such it runs from the date of the recording or registering. In this portion of the act the notorious possession by the recipient of transfers, whose recording or registering is not required, is a matter of no consequence, and as to such transfers there can be no recovery from the recipient, whether there was or was not notorious taking possession if the transfer antedates the petition in bankruptcy by more than four months. The difference between the two provisions in the act is not solely due to the use in one case of the words "required or permitted" and in the other case the omission of the word "permitted." The action of Congress in making this distinction was deliberate, for the amendments as introduced into the House by the Judiciary Committee made both provisions of the law uniform; that is, included in Sec. 60a the language found in Sec. 3b, but Congress was unwilling that the same principles should govern in both cases. It was willing that in obtaining adjudications in bankruptcy the time should be extended in all cases where the transfer was permitted to be recorded as well as required, and to all cases where, if neither required nor permitted, notorious possession was taken, to a period four months from such recording or possession, but it evidently did not propose that when it was dealing with the right of recovery of property secured by a diligent creditor, the same extension of time should be granted. A history of this legislation is found in the opinion of Judge Ray who, as a member of the House Judiciary Committee, had much to do with this history, in his

opinion holding directly contrary to the opinions of the court below.

In re Hunt, 139 Fed. Rep. 283.

The several Circuit Courts of Appeal are divided in their construction of the words appearing in Secs. 60a and 60b, "If by law such recording or registering is required." The Circuit Court of Appeals of the Sixth Circuit has held in its decision in this case below (Rec., p. 155), *Carey* v. *Donohue*, 209 Fed. Rep. 328, 335, that if the recording or registering was by law requisite to make valid the conveyance or transfer against any class of persons whatsoever, then it was a recording or registering required under the law and the date of such recording or registering fixed the date from which the four months period ran. It applied in this case the principles which it had previously announced in a case concerning a chattel mortgage in Ohio.

Loeser v. *Savings Deposit Bank & Trust Co.*, 148 Fed. Rep. 975.

These decisions of the Circuit Court of Appeals for the Sixth Circuit are supported by opinions rendered by the Circuit Courts of Appeal in two other circuits, the Seventh and Eighth.

In re Beckhaus, 177 Fed. Rep. 141.
First Natl. Bank v. *Connett*, 142 Fed. 33.
Matley v. *Giesler*, 187 Fed. Rep. 970.

On the other hand, their conclusions are in direct conflict with opinions rendered in three other Circuits, the Fifth, Ninth and Second.

Little v. *Holley-Brooks Co.*, 133 Fed. 874.
Meyer Bros. Drug Co. v. *Pipkin*, 136 Fed. 396.
In re M'Intosh, 150 Fed. 546.
In re Boyd, 213 Fed. 774.

The latest of these decisions is that of the Circuit Court of Appeals for the Second Circuit, *In re Boyd, supra.* The opinion of Circuit Judge Lacombe is succinct and we submit that its reasoning is unanswerable. He considers the decisions of the Fifth Circuit above cited and also those in the Sixth, Seventh and Eighth Circuits, including the decision in this case below, but he does not refer to the opinion cited from the Ninth Circuit. In conclusion he says:

"If this were a mere point of practice, we would follow the weight of authority in Circuit Courts of Appeals, but it involves a question of substantive law, and in the absence of controlling authority the petitioner is entitled to our own opinion. It would seem desirable that the question be brought before the Supreme Court."

In both the Hunt case, decided by Judge Ray, and the Boyd case, decided by the Circuit Court of Appeals of the Second Circuit, the courts were dealing with mortgages and not deeds, but the effect of an unrecorded mortgage in New York is precisely the same as an unrecorded deed in Ohio, and the principles should be the same.

The statute of New York says, "A conveyance of real property * * * *may* be recorded. * * * Every such conveyance not so recorded is void as against any subsequent purchaser in good faith, etc."

Real Property Law, Sec. 241.
In re Hunt, 139 Fed. Rep. 283, 286.
4 Birdseye's C. & G.'s Consolidated Laws, Art. IX, Sec. 291.

And the law of Ohio reads:

"All other deeds *shall* be recorded * * * and until so recorded or filed for record shall be deemed fraudulent

so far as relates to a subsequent *bona fide* purchaser, etc."

General Code, Sec. 8543.

Despite the use of the word "may" in New York and the word "shall" in Ohio, both have actually the same construction, and it can not be presumed that Congress meant the rights of a trustee in bankruptcy to recover a preference to hinge upon the use by the legislature of the word "may" or "shall."

The law with reference to recording a mortgage in Ohio, or registering a chattel mortgage differ vitally from that with respect to a deed. General Code, Sec. 8542 (Revised Statutes, Sec. 4133) reads.

"All mortgages executed agreeably to the provisions of this chapter, shall be recorded in the office of the recorder * * * and take effect from the time they are delivered to the recorder. * * *"

General Code, Sec. 8560 (Revised Statutes, Sec. 4150):

"A mortgage or conveyance intended to operate as a mortgage of goods and chattels which is not accompanied by an immediate delivery * * * shall be absolutely void as against the creditors of the mortgagor, subsequent purchasers, and mortgagees in good faith unless the mortgage, or a true copy thereof, be forthwith deposited. * * *"

Both a real estate and a chattel mortgage, unless recorded or deposited as the case may be, are, unlike a deed absolute in form, void as against creditors asserting a lien by a judgment and execution, by attachment, through an assignee for the benefit of creditors or through an administrator.

Hanes v. *Tiffany*, 25 O. S. 549.
Kilbourne v. *Fay*, 29 O. S. 264.
Houk v. *Condon*, 40 O. S. 569.
White v. *Denman*, 1 O. S. 110.
Betz v. *Snyder*, 48 O. S. 492.
Cheney v. *Cycle Co.*, 64 O. S. 205.

It will be noted that the language in reference to a real estate mortgage is like that in reference to a deed "shall be recorded" but the clause in reference to the effect is different "and take effect from the time, etc." But even a mortgage is good between the parties without record.

Stewart v. *Hopkins*, 30 O. S. 502, Syl. 6.
Building Assn. v. *Clark*, 43 O. S. 427, 433.

The language of the section in relation to the filing of chattel mortgages is entirely different. It contains no order or direction to file. It is concerned only with the effect of a failure to file, and that effect is the same as attends the non-recording of a real estate mortgage.

Of all the Ohio statutes then it is proper to say they are permissive. For the conveyances are valid without record or filing, as the case may be, against some persons, and properly fall within the application of the language of Sec. 3b. It would seem clear therefore that Congress was not distinguishing between the forms of the various recording statutes, but was concerned only with the effect. If the courts in New York are right in their construction of the Bankruptcy Act in relation to the law of that State, the Circuit Court of Appeals of the Sixth Circuit must have been wrong in construing, as it did, the Bankruptcy Act in relation to the Ohio law. The Ohio statute for the recording

of deeds is, so far as are concerned the rights of creditors, whether general creditors or creditors having a lien by judgment or attachment, entirely permissive.

The Bankruptcy Act is concerned with the rights of creditors and not at all with the rights of purchasers for value without notice. The trustee in bankruptcy does not have the rights or privileges of a purchaser. His rights are those of a creditor holding a lien by legal or equitable proceeding. The act provides that "such trustees, as to all property in the custody, or coming into the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies and powers of a creditor holding a lien by legal or equitable proceedings thereunder, and also as to all property not in the custody of the bankruptcy court shall be deemed vested with all the rights, remedies and powers of a judgment creditor holding an execution duly returned unsatisfied."

Sec. 47a, Clause (2) as amended June 25, 1910.

And the time as of which the trustee takes the status of a creditor holding such lien by equitable or legal process is the date of the filing of the petition in bankruptcy.

Bailey v. *Baker Ice Machine Co.*, 239 U. S. 268.

Congress, in enacting Secs. 60a and 60b, must have had in mind the status given to a trustee in bankruptcy by Sec. 47a(2) and meant that those instruments were by law required to be recorded or registered, which would otherwise be unavailing against the trustee in bankruptcy having that status.

We further submit that it is only by giving such construction to the words "if by law recording or registering thereof is required" in Sec. 60b that a reasonable

construction can be reached for that section. It fixes the time of the "reasonable cause to believe," of the recipient of a preference "if by law recording or registering thereof is required," as the time of the recording or registering the transfer. If a recording of the transfer is not requisite to make it valid against the trustee in bankruptcy, it may never be recorded. Then there is no date fixed under the act as of which the recipient must have had reasonable cause to believe a preference was intended. Congress must have presumed, in formulating the language of Sec. 60b as it did that the recipient of the preference would of necessity, to make it valid against the trustee in bankruptcy, have to record it before the filing of the petition in bankruptcy or the adjudication. In other words, Congress presumed that "required" meant required to validate against a judgment creditor or a trustee in bankruptcy. Suppose Carey had never recorded his deed. Outside of the question of preference, it was good against the trustee in bankruptcy. Carey need never have recorded it. From what date, then, would the trustee in bankruptcy have four months within which to sue to recover, and as of what date, then, would the "reasonable cause to believe" of Carey be proved? Congress, in enacting Sec. 60b, never supposed the possibility of a transfer being recoverable which was required to be recorded, except it was required to be recorded to be available as a muniment of title against the trustee in bankruptcy. They could have had no other thought with reference to the word "required" than required as against the trustee in bankruptcy.

So construed the law is consistent. A debtor may be adjudicated a bankrupt for giving a preference even if the recipient had no cause to believe a preference was intended. If the transfer was secret the petition for

the adjudication may be filed within four months of the recording whether that be required or merely permitted or if neither required or permitted, within four months of the notorious possession.

But to recover a preference, *i. e.*, to take from the diligent creditor for the benefit of those not diligent, the trustee has imposed on him burdens not imposed on the petitioning creditors seeking an adjudication in bankruptcy. Acts that are sufficient in the one case to constitute an act of bankruptcy are not of themselves sufficient to afford a recovery. The trustee must show, as the petitioning creditors did not have to show, that the recipient had reasonable cause to believe that the transfer would give him a preference. Also he must show that the transfer was within four months of the filing of the petition in bankruptcy unless recording be required. It will not avail him that the transfer was not open and notorious and unknown to other creditors until after four months had expired from the date of transfer unless it was one of those transfers of which recording was required. It will not do to argue that Congress meant the same thing in the use of the words "required or permitted" in Sec. 3b as it did by the use of the word "required" alone in Sec. 60, for it manifestly did not make other *criteria* the same. As to some transfers recording is necessary to protect the recipient against possible bankruptcy proceedings. If transfers of that kind are not recorded the trustee in bankruptcy can take title irrespective of any question of preference. Of those, like chattel mortgages in Ohio, recording is required, *i. e.*, is necessary to protect title in case of bankruptcy proceedings, even though there is no necessity as between the parties, or against general creditors, or even though the law nowhere commands

or enjoins recording. Those the trustee may recover if recorded within four months of the bankruptcy proceedings, and as to those he may show the reasonable cause to believe on the part of the recipient as of the date of recording which must necessarily be before the bankruptcy proceedings if any proceedings to recover a preference be requisite.

But as to all those transfers, even if preferential, of which the recipient is not by the local law required to make a public record or registration to perfect his title against judgment creditors and so against trustees in bankruptcy having the status of judgment creditors, a trustee seeking recovery must show that the transfer was within the four months period. If the transfer antedates the four months period, the recipient need never record and the trustee is helpless. The transfer is good against him without record. It is not "required." And if the recipient should, within the four months period or long afterwards, record the transfer which he does not have to do but is "permitted" to do, the rights of the trustee in bankruptcy ought not to be increased by the doing of that unnecessary act, and Congress, we submit, has not said that they are increased. If Carey had not recorded his deed there could have been no recovery from him. He was not required to do so to perfect his title against the trustee in bankruptcy. There is no warrant for penalizing him for doing that which he was not required to do.

We can think of no public policy that would be served by penalizing a preferred creditor who records that transfer which he has no need to record. The publicity which ought to be encouraged would thereby be discouraged. And that doubtless was a reason for

the distinction made between Secs. 3b and 60b in leaving out the word "permitted."

We respectfully submit that the decrees below should be reversed and the cause remanded with directions to dismiss the bill.

MORISON R. WAITE,
JOHN RANDOLPH SCHINDEL,
Counsel for Appellant.

No. [redacted]

OCTOBER TERM, 1915

Supreme Court of the United States

WALTER J. CAREY,

Appellant,

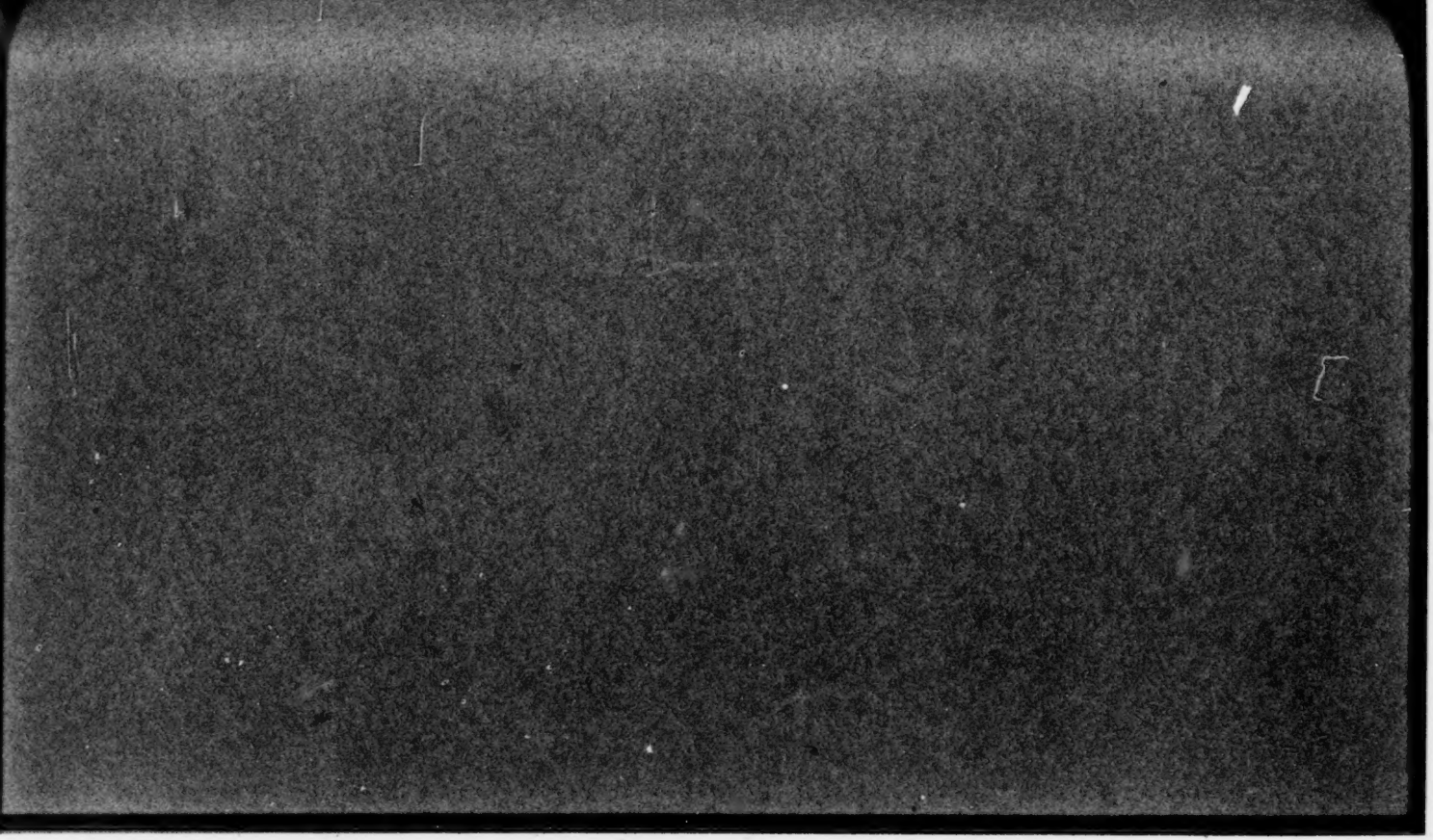
v.

E. REEDER DOUGHERTY, Trustee in Bankruptcy of JOHN E. HUMPHREYS and HARRIET F. HUMPHREYS,

Appellee.

Reply Brief for Appellant

MORTON F. WAITE,
JOHN RANDOLPH SCHNEIDER,
Counsel for Appellant.



No. 532.

OCTOBER TERM, 1914

Supreme Court of the United States

WALTER J. CAREY,

Appellant,

vs.

E. REEDER DONOHUE, Trustee in Bankruptcy of JOHN E. HUMPHREYS and HARRIET A. HUMPHREYS,

Appellees.

Reply Brief for Appellant

MORISON R. WAITE,
JOHN RANDOLPH SCHINDEL,
Counsel for Appellant

No. 532.

Supreme Court of the United States

OCTOBER TERM, 1914.

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E. REEDER DONOHUE, Trustee in Bankruptcy of JOHN E. HUMPHREYS, and HARRIET A. HUMPHREYS,

Appellees.

REPLY BRIEF FOR APPELLANT

Counsel for appellees in their brief make certain statements of fact which we can not permit to go uncontradicted, and certain others which require a statement of additional facts in explanation.

Humphreys, the bankrupt, was originally a lawyer, and a successful one. He had had charge of several estates, either as trustee himself, or adviser of others, and had gained the respect and confidence of many. His success in making investments led him to go into the stock brokerage business which he continued for several years, enjoying during all that period, until he suddenly left the country on December 20, 1910, a reputation for honesty and of good financial standing in the community (Rec., p. 43, 45, 46). He enjoyed a reputation for wealth, not in real estate, but in "stocks and bonds and valuable assets of that kind," (testimony of Judge Davis, Rec. p. 43).

After his departure, December 20, 1910, but not before, it was discovered that he had misappropriated trust funds, and had forged notes and mortgages to a considerable amount, and was hopelessly insolvent.

The appellant Carey is a member of the firm of Carey & Zimmerman, in the real estate and insurance business. His firm had built the house on Cameron Avenue in Norwood, a suburb of Cincinnati, conveyed by the deed from Humphreys to Carey, the subject of this suit. Humphreys bought it about 1895. (Rec., p. 54.) Carey began to trade with him as a stock broker in 1907. (Rec., p. 56.) On January 4th, 1910, they had a settlement and Humphreys gave Carey his notes aggregating $14,000, none of which were paid except for the deed to said house complained of in the bill in this cause. Other notes previously given were paid subsequent to said settlement, and those of the $14,900 series that matured prior to August 6, 1910, were renewed. (Rec., p. 57.) On the date last mentioned Carey was pressing Humphreys who explained that his resources were tied up as collateral in banks. Carey then proposed that Humphreys sell the Cameron house to him, to which Humphreys assented, provided he could have the opportunity of buying it back. This was agreeable to Carey, who agreed whenever Humphreys wanted to redeem the house to retransfer it to him. (Rec., p. 58.) A deed was then made and executed by Humphreys and his wife and delivered that day to Carey, and also new notes. The first note for $2,500 matured November 15, 1910, was not paid, and on the next day Carey recorded the deed, which was three months and ten days after its delivery.

There is no testimony that this indebtedness represented Carey's gains. There is no testimony except that

of Humphreys, whose deposition was taken in Honduras, that it was the result of trading on margins. There is no testimony of an agreement to return the deed to Humphreys if he paid the $5,500. There is no testimony, except that of Humphreys, that the deed was not to be placed on record. There is no testimony that the property conveyed by this deed was then Humphreys' only asset. There is no testimony that anyone became a creditor of Humphreys in reliance upon his ownership of said real estate after August 6, 1910, or in fact that any of his indebtedness was incurred after that date.

The suggestion appearing at page 4 of the brief for the appellees that the failure of Carey to place the deed of record prevented Judge Davis and other creditors from acting is not supported by the facts. The deed was recorded three weeks before the four months period from its date had run out, yet no one, such was Humphreys' good credit, thought of attacking the transfer until more than a month after the recording, when Humphreys absconded and his delinquencies became public. Judge Davis, who was at least as intimate with Humphreys as was Carey not only did not act, but on December 15, 1910, renewed one of Humphreys' notes then maturing. (Rec., p. 39.) This acquiescence of Judge Davis and other creditors in the transfer of the house to Carey was doubtless due to the fact that the basis of Humphreys' credit and supposed wealth was not this real estate, but his stocks and bonds. (Rec., p. 43.)

There is no such case here, either in the pleadings or the evidence as was presented in

Clayton v. *Exchange Bank*, 121 Fed. Rep. 630,

cited by the other side.

There is no other basis in the evidence nor in the findings of the court below for a recovery from Carey than that the deed constituted an avoidable preference under the bankruptcy law and this we submit must fall because of the four months period of limitation.

Counsel rely on, among other cases, that of the Circuit Court of Appeals of the Seventh Circuit,

In re Beckhaus, 177 Fed. Rep. 141.

This like the two cases cited which were decided by the Circuit Court of Appeals of the Eighth Circuit, the *Connett* and the *Motley* cases, and the *Loeser* case in the Sixth Circuit, involve transfers whose recording was necessary to validate them against creditors who had perfected a lien. It should be noted that the decision of the Circuit Court of Appeals below is the only case on appeal which decides that recording is "required" within the meaning of the bankruptcy law of a transfer which is valid under the local law, without being recorded, against creditors having a lien. All the cases cited, too, arose before the amendments of 1910.

In re Beckhaus should be compared with another case decided by the same court,

In re Sturtevant, et al.; Rydberg v. *Smith*, 188 Fed. Rep. 196.

While that case was decided in 1911, it was concerned with transactions which antedated the amendments of 1910, so that the changes in the law made thereby were not involved or mentioned by the court.

In the *Sturtevant* case the court held that a chattel mortgage given in Illinois for a present consideration

in April, 1907, when the maker was solvent, and not recorded until October, 1909, fifteen days prior to the filing of a petition in bankruptcy, was valid, even though then, at the date of the recording, the maker was insolvent, and the mortgagee then had reasonable cause to believe that he was by the recording gaining a preference. This result was reached in holding, (*a*) that Sec. 60a applied only to cases "where a preference consists in a transfer" and that the transfer when made constituted no preference, and (*b*) "if the word 'required' of Sec. 60a is to be construed as referring to a transaction which would be invalid for all purposes then it does not apply to the case in hand, for the recording of the mortgage is not required in that sense under the Illinois statute" (page 198 of 188 Fed. Rep.). At page 199, bottom, the court distinguished and perhaps overruled *In re Beckhaus* in so far as that case seemed to hold that a chattel mortgage was one "required" to be recorded within the meaning of the Bankruptcy Act. To reach the result it did in the *Sturtevant* case, were the amendments of 1910 in effect, the court would clearly have to hold that such a transfer was not one "required" to be recorded. For, by Sec. 60b as amended, it is the date of the recording when "required" and not the date of the transfer which fixes the time as of which must be considered whether the transfer operates as a preference, and the recipient had reasonable cause to believe it would effect a preference. That the transfer was originally given in good faith and for a valid present consideration can not save the transaction now, if recording be "required" and at the time of recording the elements of a voidable preference are present. It is this amendment of 1910 to Sec. 60b as well as that to Sec. 47a(2) giving, the trustee the

status of a lien creditor which necessitates a different construction to the word "required" than was stated in the cases decided before the amendment on which our opponents rely. The final result reached, however, would be the same under the construction which we urge in all cases where under the local law recording was necessary to validate the instrument of transfer against creditors who have secured a lien. That a transfer given for a good present consideration, valid against such creditors without record, should fail if recorded within the four months period, and the transferee then have cause to believe the recording would give him a preference, seems far from any intent of Congress, yet that would be the result if "required" be construed as our opponents would have it, and as did the courts below.

Even the Circuit Court of Appeals for the Sixth Circuit has sometimes given the natural construction to the word "required" for which we are contending, a construction which one naturally gives to the word unless led astray by an effort to produce a result considered advisable from a supposed public policy or other reason. It has used this language:

"The purpose of Sec. 60a, as originally enacted, was to define what judgments and what transfers are preferential, and it still performs that office. The added sentence prolonging the four months' period until four months after the date of recording or registering the transfer applies only to cases 'where the preference consists in a transfer' and the conditional clause, 'if by law such recording or registering is required,' we interpret to mean if by the law of the State by which *the validity of the mortgage against contesting creditors is determined*, such recording or registering is required."

In re Klein, 197 Fed. 241, 249.

We refer also to a later case decided by District Judge Ray,

In re Mosher, 224 Fed. Rep. 739, 744.

Respectfully submitted,

MORISON R. WAITE,
JOHN RANDOLPH SCHINDEL,
Counsel for Appellant.

No. 532, 179

Supreme Court of the United States.

OCTOBER TERM, 1914.

WALTER J. CAREY,

Appellant,

versus

E. REEDER DONOHUE, Trustee in Bankruptcy of John E. Humphreys, and HARRIET A. HUMPHREYS,

Appellees.

Brief for Appellees.

DAVID DAVIS,
E. R. DONOHUE,
W. G. DURRELL,
Counsel for Appellees.

Supreme Court of the United States.

OCTOBER TERM, 1914.

WALTER J. CAREY,

Appellant,

No. 532. vs.

E. REEDER DONOHUE, Trustee in Bankruptcy of John E. Humphreys, and HARRIET A. HUMPHREYS,

Appellees.

Brief for Appellees.

It is admitted by all parties that a deed was delivered in August, 1910, to Walter J. Carey by the bankrupt, John E. Humphreys. The delivery of said deed was under the following circumstances:

Humphreys and Carey had been operating in stocks in various ways, and it would seem from the evidence that Mr. Carey had won something like $15,000 or $18,000; that Mr. Carey during the latter part of the year 1909 and up to August 6, 1910, kept pressing Humphreys for a settlement; that notes for these profits had been given by Humphreys to Carey during the latter part of 1909, which notes were renewed from time to time, in-

cluding the last renewal of said notes on August 6, 1910. Said Carey had been persistent in pressing Humphreys for the payment of said notes, but had failed to collect the notes or even the interest on them. When several of said notes were discounted in bank Carey had to take them up and pay the discount; matters had gotten to such a point that Humphreys could make no payments whatever, give no security, and had only one asset left which was his own home. For this Mr. Carey demanded a deed. Finally on August 6, 1910, under certain conditions a deed was executed and delivered by Humphreys to Carey; said deed was not to be placed upon record, but was placed upon record without the consent of the grantor on the 15th day of November, 1910.

It was also understood between Humphreys and Carey that said deed was to be returned by said Carey to said Humphreys upon payment of the sum of $5,500.

We understand fully that this court will not review questions of fact or the weight of the evidence.

Mr. Humphreys was declared a bankrupt on January 24, 1911. The deed in question was left for record with the recorder of Hamilton county, Ohio, the 15th day of November, 1910, which was less than four months prior to his adjudication in bankruptcy. Said deed had been in the possession of Mr. Carey since August 6, 1910, which date was more than four months before Humphreys was declared a bankrupt. Said Carey was never in possession of said property, and had held said deed secretly through an understanding between himself and Humphreys from the 6th day of August, 1910, until the 15th day of November of the same year. The only question it seems to counsel is this: Did Mr. Carey's possession of said deed, held secretly by him from the 6th day of August, 1910, until November 15 of the same

year, and not recorded, give him protection, or, putting it in another way, when he recorded the said deed November 15, 1910, did he have any preference as against the other creditors who were of the same class as himself?

Counsel for appellant base their claim for reversal of the decree in the Circuit Court of Appeals upon one ground, viz:

That the deed from Humphreys to Carey executed and delivered August 6, 1910, but not left for record until November 15, 1910, was an instrument which the bankrupt law does not require to be recorded for the reason that the Ohio law, as counsel claim, does not require the record of a deed except for protection against a subsequent *bona fide* purchaser without notice. They base their argument upon the case of "*In re Hunt*," 139 Fed., p. 283, a case of the District Court of the Northern District of New York, decided by Judge Ray, July 22, 1905; and upon the case of "*In re Boyd*," 213 Fed., 774, decided by Judge Lacombe, April 28, 1914, in the Circuit Court of Appeals, Second Circuit. In these cases it was held that a mortgage executed and delivered more than four months prior to adjudication of bankruptcy was valid against the trustee in bankruptcy, because the New York law does not require mortgages to be recorded, except for protection against subsequent *bona fide* purchasers or mortgagees. The conclusions of the learned judges in these cases and their reasons are fully set out in the brief for appellant and need not be repeated here. The Fifth and Ninth Circuits appear to agree with the Second.

If the construction placed by these Circuit Courts upon Sections 60*a* and 60*b* is upheld by this court the door would be thrown open to great frauds. A debtor,

insolvent but having valuable assets in real estate, may convey one parcel to one importunate creditor, another parcel to another, etc., until his extensive real estate holdings have been parted with and, the deeds being, as in the instant case, withheld from record, he would have fictitious assets, and the so-called vigilant creditors would be paid, perhaps in full, the others get nothing, even though they gave credit on the strength of his supposed real estate holdings as shown by the tax duplicate, said real estate belonging in reality to others through the existence of deeds known only to himself and his grantees, to the debtors and the vigilant creditors. An instance of this is shown in the testimony of Judge Davis, Rec., p. 39. On June 2, 1910, Judge Davis took a note from Humphreys for $1,900. On June 17, Humphreys paid $300 and on July 5, $200. This was all that was ever paid and it was the failure of appellant to place the deed on record or take possession of the property that prevented Judge Davis and others from acting, while grantees' deeds were ripening and Humphreys was hoping to make a lucky guess on the stock market.

Failure by Carey from August 6, 1910, to November 15, 1910, to record the deed was, of itself, so far as the creditors of said bankrupt are concerned, fraudulent. That question was decided in the case of *Clayton* v. *Exchange Bank*, 121 Fed., 630. *Certiorari* was denied by your honors, 191 U. S., 567.

The question at bar is one that has been before the courts in numerous cases in the several districts of the United States, and in our opinion the following cases are to the point and sustain the contention of the trustee: *In re Beckhaus*, 177 Fed., 141; *Loeser* v. *Savings Dep. Co.*, 148 Fed., 975; *English* v. *Ross*, 140 Fed., 630; *Ragan* v. *Donovan*, 189 Fed., 138; *Mattley* v. *Geisler*, 187 Fed.,

970; *Dulaney* v. *Morse*, 39 App. Cas., 523; *First Nat. Bank* v. *Connett*, 142 Fed., 33.

The Ohio statute, Section 11104, applies to the conduct of Mr. Carey as well as does the bankrupt act as amended June, 1910. At the time Mr. Carey procured said deed he was told of the bankrupt's financial condition and that the effect of the transfer would be to prefer him to other creditors; yet, by secret agreement the deed was kept from record for more than three months. The bankrupt act as amended in June, 1910, was to cover exactly such cases as we have at bar. Mr. Carey, in order to have title to the property so that he could convey it under the Ohio statute, would have to record his deed before it would be a merchantable title. Under the bankrupt act, in order to have preference for himself and protection as against the creditors of the bankrupt he must have the deed recorded and it must be on record at least four months before the filing of the petition in bankruptcy. Under the Ohio law he would not have protection in four months but would be met by Section 11104, the statute to recover real estate; in other words an assignee under the Ohio laws, though the deed may have been on record for a year or more if the property was transferred from the bankrupt to Carey under the circumstances of this case could still recover the property from Carey.

The question is asked by counsel for appellant: if Mr. Carey did not record his deed, how the trustee in bankruptcy could recover the property from him? The trustee in bankruptcy would then take the property as shown by record as that of the bankrupt and if the trustee in bankruptcy undertook to sell the property Mr. Carey would have to assert his claim to prevent it. The only thing he could then do would be to produce his deed

and assert ownership, which ownership would not be recognized by the court. How would Mr. Carey then stand? No better than he stands at present. Both positions would be untenable. At the time of receiving the deed Mr. Carey was to get the last vestige of the bankrupt's property into his possession which would only pay about one-fourth of the amount due him and at the same time other large creditors having the same right to the small pittance left to Humphreys would get nothing.

The decision of Judge Killits in the case of *Ragan* v. *Donovan, Assignee*, 189 Fed., 138, appears to us conclusive. The third paragraph of the syllabus is as follows:

> "By reason of the provisions of Section 8543, General Code, that deeds which have not been recorded are void as against *bona fide* purchasers for value without knowledge although good as between the parties, the recording of a deed is required by Section 60*a* of the bankruptcy act."

And in his opinion, Judge Killits says:

> "Surely, the several persons who went to the Citizens State Banking Company and involved themselves in these heavy liabilities on Cahill's paper have a forceful equity against the representative of the bank that permitted Cahill to masquerade to the world as the owner of a large amount of real property and thus a reasonably safe man with whom a joint liability might be incurred."

And a little further along:

> "The court is justified we think, in holding that the interpretation placed upon the language of Section 60, par. (A), read in connection with Section 3, par. (B), of the bankruptcy

act, by the cases of *English* v. *Ross*, 140 Fed. Rep., 630; *Loeser* v. *Bank & Trust Co.*, 148 Fed. Rep., 975; and *In re Beckhaus*, 177 Fed. Rep., 141, should be applied to a transaction where deeds of realty are involved as in this case and that we should hold that the preference manifestly attempted in behalf of the bank should be referred for date to the time of filing the deeds."

The opinion of Judge Warrington, reported in 209 Fed., 328, and before your honors in the record (page 143) treats of the four months provisions of Section 60 at page 148. He applies the decision in the Loeser case to this case and finds that the case of *Wright* v. *Bank*, 59 O. S., 80, does not apply. It would be impossible for us to make extracts from this opinion and give it the weight it deserves. We respectfully submit that the decrees below should be affirmed and the appeal dismissed.

DAVID DAVIS,
E. R. DONOHUE,
W. G. DURRELL,
Counsel for Appellees.

CAREY *v.* DONOHUE, TRUSTEE IN BANKRUPTCY OF HUMPHREYS.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

No. 179. Argued January 17, 1916.—Decided March 13, 1916.

The reference to the requirement for record in § 60 of the Bankruptcy Act is not to a requirement for the protection of *bona fide* purchasers without notice and who are outside the purview of the act, but to a requirement of record for protection of creditors and persons interested in the bankrupt's estate and in whose behalf or place the trustee is entitled to act; and where there is no such requirement and the transfer was made more than four months before the filing of the petition there can be no recovery under § 60.

A provision in a state statute that instruments conveying real estate shall until filed for record be deemed fraudulent, only so far as relates to subsequent *bona fide* purchasers without knowledge or notice, as in § 8543, General Code of Ohio, is not a requirement that the instrument be recorded within the meaning of § 60 of the Bankruptcy Act.

The amendment of February 5, 1903, to § 60 of the Bankruptcy Act as finally enacted did not make § 60 so conform to § 3 b that the same rule was established for computing the time within which a petition might be filed after a transfer giving a preference, and the time within which under § 60 the trustee might commence an action to recover property preferentially transferred.

The legislative history of the amendment of February 5, 1903, shows that Congress by the final omission of the provision in regard to possession, originally included in the bill as it passed the House of Representatives but struck out in the Senate, deliberately refused to make such conformity; and the courts cannot supply by construction that which Congress has clearly shown its intention to omit.

213 Fed. Rep. 1021, reversed.

THE facts, which involve the construction and application of § 60 of the Bankruptcy Act and the validity of a judgment setting aside transfers made more than four months before the petition, are stated in the opinion.

Mr. Morison R. Waite, with whom *Mr. John Randolph Schindel* was on the brief, for appellant.

Mr. E. R. Donohue, with whom *Mr. David Davis* and *Mr. W. G. Durrell* were on the brief, for appellee.

MR. JUSTICE HUGHES delivered the opinion of the court.

This suit was brought by a trustee in bankruptcy to set aside a transfer made by the bankrupt of certain real estate. Upon appeal from a decree in favor of the trustee, it was held by the Circuit Court of Appeals that the case had been tried, and the decree was based, upon the theory of preference voidable under the Bankruptcy Act, and for the purpose of appropriate amendment to conform the bill to the proof, the decree was reversed and the cause was remanded. 209 Fed. Rep. 328. The amendment was made accordingly, and the decree was reëntered and affirmed. 213 Fed. Rep. 1021.

The petition in involuntary bankruptcy was filed on January 3, 1911, and the adjudication was had on January 24, 1911. The following facts appear from the findings: On August 6, 1910, John E. Humphreys (the bankrupt) executed and delivered to Walter J. Carey (the appellant) the deed in question. It was left for record on November 15, 1910, with the recording officer of the proper county, and was recorded. Humphreys was insolvent at the time of the execution of the deed, and Carey at that time had reasonable cause to believe that such transfer to him if made would effect a preference, being given in payment of an antecedent debt. On December 31, 1910, Carey conveyed the property to innocent purchasers, this deed being left for record on January 3, 1911. It was held that the latter conveyance placed the property itself beyond the reach of the court; and judgment was given in favor of the trustee and against Carey for the

value of the property as found by a jury, with provision for the payment by the trustee to the wife of the bankrupt of the estimated value of her inchoate right of dower.

We are not concerned with the provisions of the Ohio statute relating to preferences (General Code, §§ 11104, 11105),—a statute which provides a different test of liability from that of § 60 [1] of the Federal Act pursuant to which the recovery was had. (209 Fed. Rep. 331, 332.) The sole question presented for the consideration of this court is whether the deed executed by the bankrupt was one which was 'required' to be recorded within the meaning of this section. If it was not, there could be no recovery of the property under § 60, as the deed was

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[1] The applicable provisions of § 60 are as follows:

"Sec. 60. Preferred Creditors—a. A person shall be deemed to have given a preference if, being insolvent, he has, within four months before the filing of the petition, or after the filing of the petition and before the adjudication, procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class. Where the preference consists in a transfer, such period of four months shall not expire until four months after the date of the recording or registering of the transfer, if by law such recording or registering is required.

"b. If a bankrupt shall have procured or suffered a judgment to be entered against him in favor of any person or have made a transfer of any of his property, and if, at the time of the transfer, or of the entry of the judgment, or of the recording or registering of the transfer if by law recording or registering thereof is required, and being within four months before the filing of the petition in bankruptcy or after the filing thereof and before the adjudication, the bankrupt be insolvent and the judgment or transfer then operate as a preference, and the person receiving it, or to be benefited thereby, or his agent acting therein, shall then have reasonable cause to believe that the enforcement of such judgment or transfer would effect a preference, it shall be voidable by the trustee and he may recover the property or its value from such person."

executed and delivered more than four months before the petition in bankruptcy was filed. If the deed was required to be recorded in the sense of the statute, it is clear that the trustee was entitled to recover, as the recording was within the four months' period and the other conditions of recovery were satisfied.

The provision for the recording of the deed is found in § 8543 of the General Code of Ohio, which follows the requirement for the recording of mortgages and powers of attorney. The section reads:

"Section 8543. All other deeds and instruments of writing for the conveyance or encumbrance of lands, tenements or hereditaments executed agreeably to the provisions of this chapter shall be recorded in the office of the recorder of the county in which the premises are situated, and until so recorded or filed for record, they shall be deemed fraudulent so far as relates to a subsequent *bona fide* purchaser having, at the time of the purchase, no knowledge of the existence of such former deed or instrument."

Referring to this section, the Supreme Court of Ohio said in *Dow* v. *Union National Bank*, 87 Oh. St. 173, 181: "This provision of the statute must be accepted as exclusively defining the consequences which follow a failure to file a deed for record, and there being mere neglect, unaccompanied by any fraudulent conduct or representation on the part of the grantee, no right can accrue to anyone other than such *bona fide* purchaser." Accordingly, it was held that the mere failure to record a deed did not render it invalid as to creditors of the grantor although they became such on the faith of his representation that he was still the owner of the property conveyed. This decision applied the ruling in *Wright* v. *Franklin Bank*, 59 Oh. St. 80, 92, 93, where it was said: "Lands held by a properly executed, but unrecorded deed, are also free from the debts of the grantor, whether attempted

to be reached in an assignment for the benefit of creditors made by him, or upon an attachment, judgment or execution against him. The title under such a deed is good as against everything except a subsequent *bona fide* purchaser without notice. . . . Mortgages so executed, whether on an estate in real property or on only an interest therein, take effect from the time of the delivery to the recorder, and deeds so executed, conveying the estate or only an interest therein, that is, an equity, take effect from delivery, except as against subsequent *bona fide* purchasers without notice, and as against such the deed must be also recorded." In the present case, the Court of Appeals was satisfied that in equity the instrument (which was absolute in form) should be treated as a mortgage, but the court did not think this to be important because of the holding of the Ohio court that an instrument in this form, "unlike a legal mortgage, operates upon delivery to transfer title and so is required to be recorded as a deed." 209 Fed. Rep. 334, 335; *Kemper* v. *Campbell*, 44 Oh. St. 210, 218; *Wright* v. *Franklin Bank*, 59 Oh. St. 95; *Cole* v. *Merchants' National Bank*, 15 Ohio C. C. Rep. (N. S.) 315, 347.

Under these decisions, then, we assume that there was no requirement that this conveyance should be recorded in order to give it validity as against any creditor of the bankrupt, whether a general creditor, or a lien creditor, or a judgment creditor with execution returned unsatisfied; that is, as against any class of persons represented by the trustee or with whose 'rights, remedies, and powers' he was to be deemed to be vested. Bankruptcy Act, § 47a. This fact, the appellant contends, makes recovery impossible under § 60; while the appellees insist that the provision in the interest of subsequent *bona fide* purchasers constitutes a requirement of recording which entitles a trustee to recover for the benefit of creditors. With respect to the construction of the

clause in question, there has been diversity of opinion in the Circuit Courts of Appeals. In the Sixth, Seventh, and Eighth Circuits, the view has been taken that the word 'required' refers 'to the character of the instrument giving the preference' without regard to the persons in whose favor the requirement is imposed; that is, if the transfer is required to be recorded as to anyone, the trustee may recover if it has not been recorded more than four months before the filing of the petition in bankruptcy. See *Loeser* v. *Savings Bank* (C. C. A., Sixth), 148 Fed. Rep. 975, 979 (followed by the decision in the present case); *In re Beckhaus* (C. C. A., Seventh), 177 Fed. Rep. 141 (see *In re Sturtevant* (C. C. A., Seventh), 188 Fed. Rep. 196); *First National Bank* v. *Connett* (C. C. A., Eighth), 142 Fed. Rep. 33, 36; *Mattley* v. *Giesler* (C. C. A., Eighth), 187 Fed. Rep. 970, 971. A different conclusion has been reached in the Second, Fifth and Ninth Circuits. See *In re Boyd* (C. C. A., Second), 213 Fed. Rep. 774; *Meyer Drug Co.* v. *Pipkin Drug Co.* (C. C. A., Fifth), 136 Fed. Rep. 396; *In re McIntosh* (C. C. A., Ninth), 150 Fed. Rep. 546; also, *In re Hunt* (D. C., N. Y.), 139 Fed. Rep. 283.

In its original form, § 60 made no reference to record. 30 Stat. 562. The four months ran from the time of the giving of the preference and if this period had elapsed when the bankruptcy proceeding was instituted, there could be no recovery under § 60, whether the transfer had, or had not, been recorded. See *Humphrey* v. *Tatman*, 198 U. S. 91; *Rogers* v. *Page*, 140 Fed. Rep. 596, 599. But a different rule was established for computing the time within which a petition in bankruptcy might be filed. In § 3b, it was provided that the four months' period should not expire "until four months after (1) the date of the recording or registering of the transfer . . . when the act consists in having made a transfer . . . for the purpose of giving a preference . . . if by

law such recording or registering is required or permitted, or, if it is not, from the date when the beneficiary takes notorious, exclusive, or continuous possession of the property unless the petitioning creditors have received actual notice of such transfer." 30 Stat. 546, 547. This distinction between the test of the right to institute bankruptcy proceedings and the test of the right to recover from one who had received a transfer alleged to be a preference lay in the terms of the act and could not rightly be ignored. It was urged that the result was to encourage secret preferential transactions; but the wisdom of the prescribed condition of recovery from the preferred creditor, and the advisability of conforming the provision of § 60 to that of § 3b was a matter for legislative, not judicial, consideration. To secure this conformity, an amendment to § 60 was proposed in Congress in the year 1903. As passed by the House of Representatives, it added to § 60a the following clause: "Where the preference consists in a transfer, such period of four months shall not expire until four months after the date of the recording or registering of the transfer, if by law such recording or registering is required or permitted, or if not, from the date when the beneficiary takes notorious, exclusive or continuous possession of the property transferred." Cong. Rec., 57th Cong., 1st Sess., Vol. 35, Part 7, pp. 6938, 6943. The Senate struck from this proposed amendment all that follows the words "if by law such recording or registering is required," and as thus limited the amendment was adopted by Congress. Cong. Rec., 57th Cong., 2d Sess., Vol. 36, Part 1, p. 1036; Act of Feb. 5, 1903, c. 487, 32 Stat. 797, 799, 800; *In re Hunt*, 139 Fed. Rep. 286. There in no basis for the assumption that the words which the House of Representatives had desired to add were ultimately deemed to be surplusage, for these words had an obviously distinct significance and they had been included in § 3b which in this respect remained unchanged.

We cannot but regard the action of Congress as a deliberate refusal to conform the requirements of § 60 to those of § 3b, and we are not at liberty to supply by construction what Congress has clearly shown its intention to omit. It should also be observed that § 60 was again under consideration by Congress in the year 1910, and it was again amended; but the last sentence of § 60a, as inserted in 1903, was left unaltered. And the same conditional clause—"if by law recording or registering thereof is required"—was used in the amended subdivision b (*ante*, p. 432, *note*). Whatever argument is made for an extension of the clause, in order more completely to conform it to the language of § 3b, we must disregard as addressed to a matter solely of legislative policy.

As Congress did not undertake in § 60 to hit all preferential transfers (otherwise valid) merely because they were not disclosed, either by record or possession, more than four months before the bankruptcy proceeding, the inquiry is simply as to the nature of the requirement of recording to which Congress referred. The character of the transfer itself, both with respect to what should constitute a transfer and its preferential effect, had been carefully defined. It is plain that the words are not limited to cases where recording is required for the purpose of giving validity to the transaction as between the parties. For that purpose, no amendment of the original act was needed, as in such a case there could be no giving of a preference without recording. But in dealing with a transfer, as defined, which though valid as between the parties was one which was 'required' to be recorded, the reference was necessarily to a requirement in the interest of others who were in the contemplation of Congress in enacting the provision. The natural and, we think, the intended meaning was to embrace those cases in which recording was necessary in order to make the transfer valid as against those concerned in the distribution of

the insolvent estate; that is, as against creditors, including those whose position the trustee was entitled to take. This gives effect to the amendment and interprets it in consonance with the spirit and purpose of the Bankruptcy Act. See Sen. Rep., No. 691, 61st Cong., 2d Sess., p. 8. In the present case, there was no requirement of recording in favor of creditors, either general creditors or lien creditors. The requirement of the applicable law was solely in favor of subsequent *bona fide* purchasers without notice. These subsequent purchasers are entirely outside of the purview of the Bankruptcy Act. The proceeding in bankruptcy is not, in any sense, in their interest, and the trustee does not represent them. We can find no ground for the conclusion that the clause "if by law recording or registering thereof is required" had any reference to requirements in the interest of persons of this description. The limitation of the provision to those transfers which are 'required' to be recorded under the applicable law is not to be taken to be an artificial one by which the rights of creditors are made to depend upon the presence or absence of local restrictions adopted, *alio intuitu*, in the interest of others. Rather, as we have said, we deem the reference to be to requirements of registry or record which have been established for the protection of creditors,—the persons interested in the bankrupt estate, and in whose behalf, or in whose place, the trustee is entitled to act. And where, as in this case, there is no such requirement, and the transfer was made more than four months before the filing of the petition in bankruptcy, there can be no recovery under § 60.

In this view, the decree must be reversed and the cause remanded for further proceedings in conformity with this opinion.

It is so ordered.